



CASE NO. 1345

DATE OF HEARING 10/17/15

Town of Aurora Zoning Board of Appeals
300 Glead Avenue, East Aurora, New York 14052

Zoning Board of Appeals Application Form

I. TYPE OF REQUEST

AREA VARIANCE SPECIAL USE PERMIT USE VARIANCE INTERPRETATION

II. APPLICANT/PETITIONER

Applicant's Name Legacy Polo Grounds LLC
Address 250 Ramsdell Ave
City Buffalo State New York ZIP 14216
Phone 716-689-3300 Fax 716-639-0893 Email fac@legacydev.com
Interest in the property (ex: owner/purchaser/developer) Owner

III. PROPERTY OWNER INFORMATION (If different from applicant information.)

Property Owner(s) Name(s) _____
Address _____
City _____ State _____ ZIP _____
Phone _____ Fax _____ Email _____

III. PROPERTY INFORMATION

Property Address Cheval Road, East Aurora, NY (350 QUAKER ROAD)
SBL# 175.06-1-3 175.06-1-1 175.06-2-1
Property size in acres 15+ Property Frontage in feet _____
Zoning District R2 Surrounding Zoning _____
Current Use of Property Residential

IV. REQUEST DETAIL

(check all that apply)

Variance from Ordinance Section(s) # _____
 Special Use Permit for: _____
 Use Variance for: _____
 Interpretation of _____

PETITIONER'S LETTER OF INTENT
Legacy Polo Grounds, LLC
September 18, 2019

I. Please describe in detail the proposed project, reason the Area Variance (AV) is requested and any additional information that may be helpful to the Zoning Board of Appeals (ZBA) in deciding this appeal:

This Petition seeks the ZBA's approval for an AV to increase the buildable square footage at the Polo Grounds Condominium ("Project") to allow for the construction of a 47th unit.

Legacy Polo Grounds, LLC ("Petitioner") asserts that density is one means to calculate the effect a given development has on the Town of Aurora's ("Town") resources and infrastructure ("Impact"). In this context, we define "Density" as total number of dwelling units.

Petitioner also asserts that the Impact to the Town of a dwelling unit is no greater if it is constructed in a single structure rather than a double structure because there are no additional inhabitants, demised premises, infrastructure or vehicular traffic for a dwelling unit whether it is in a single or a double structure. Therefore, Density as we have defined it is the most important measure of the Impact of this Project.

The Project is a cluster development originally approved in 2007 in accordance with the then-applicable Town Law Section 278 (d) ("Cluster Ordinance"). Petitioner is the Project developer and the condominium "Sponsor" under the Polo Grounds Condominium Offering Plan.

Under the Cluster Ordinance, an "as-of-right" site plan was developed based on the existing R-2 zoning that contained a mix of single and double structures that produced a total Density of 47 dwelling units on a site plan that impacted 560,000 SF of buildable area. Subsequently, the ZBA approved on July 17, 2014 a change to the buildable area to 592,000 SF but also reduced the total permitted number of dwelling units to 46.

Town Law Section 278 (d) gives the Planning Board the authority to adjust the mix of singles and doubles provided the maximum number of dwelling units does not exceed the "as-of-right" maximum Density of 47 dwelling units (See attached Memorandum of Law). To limit the total number of dwelling units to less than the as of right density of 47 is to deprive the Planning Board of its authority under the Town Law Section 278 (d) that calls for the Planning Board to exercise its authority to determine whether the as-of-right Density is achieved by "detached, semi-detached, attached or multi-story structure".

On September 5, 2019, the Planning Board recommended to the ZBA approval of the addition of the 47th unit. The minutes of that meeting demonstrate that the Planning Board agrees with the Petitioner that there would be no greater Impact under the requested Density that would create a new combination of single and double structures than that contemplated by the original site plan approval and its combination of singles and doubles.

Accordingly, we hereby request an AV to increase to the maximum buildable area by 16,000 SF from 592,00 to 608,000 SF in order to restore the permitted Density to its original 47 units.

PETITIONER'S LETTER OF INTENT
Legacy Polo Grounds, LLC
September 18, 2019

II. An Area Variance is requested because the applicable regulations and restriction on the Zoning Code of the Town of Aurora have caused unnecessary hardship as demonstrated by the following:

1. I cannot realize a reasonable return on my property for each and every permitted use allowed in the current zoning classification as demonstrated by the accompanying financial evidence:

The cost of all site improvements, "soft" costs such as architectural and engineering costs, plus land cost were divided equally among the 47 units ("Lot Cost") that were originally approved in 2007. The total Lot Cost per unit as of September 1, 2019 is \$75,076. Accordingly, if we are unable to construct the 47th unit, we will have an out-of-pocket financial loss (hardship) totaling \$75,076.

In addition, we have the reasonable expectation of generating a profit from our investment in this property. Our gross profit margin has averaged 14% of the unit sales price. The average sale price of the last ten homes sold at the Polo Grounds is \$479,787. Therefore, we will have an additional financial hardship in the form of lost profit totaling (\$479,787 x 14%) \$67,170.

The total financial hardship is summarized below:

<u>Type</u>	<u>Amount</u>
Lot Cost	\$75,076
Lost Profit	67,170
Total Hardship	\$142,246

2. Describe why your alleged hardship relating to the subject property is unique and does not apply to other properties in the zoning district or neighborhood:

Town Law 278 (d) applies to the subject property because it was the then-current Code section applicable to cluster developments for the purpose of establishing, among other things, Density. However, it is no longer the operative cluster ordinance in the Town of Aurora.

Therefore, the applicable Density calculation is unique to the subject property.

3. Describe why you believe that the essential character of the neighborhood or community will not change if the Zoning Board of Appeals grants you a use variance:

- a. The infrastructure necessary to support the 47th unit is in place and more than sufficient to support the 47th unit.
- b. The addition of a single unit will not result in a meaningful Impact as previously defined.
- c. To the contrary, the addition of the 47th unit will be a benefit to the community as there will be a higher tax base from a unit in a community that to-date, has yet to place a single student in the East Aurora School Union Free District.

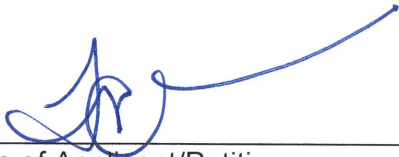
PETITIONER'S LETTER OF INTENT
Legacy Polo Grounds, LLC
September 18, 2019

- d. The 47th unit will be a benefit to the Polo Grounds Condominium neighborhood residents since the cost of common charges would be spread among the originally approved 47 units. All residents will pay higher common charges if there are only 46 units.

4. Is your need for a Area Variance a result of your own actions (is your difficulty self-created)?

No. The very purpose of the applicable cluster statute is to "enable and encourage flexibility of design and development of the land". Town Law Section 278 (d) affords the planning board broad discretion to adjust the mix of housing in a residential development and it recommended approval of the 47th unit at its regular meeting on September 5, 2019.

V. SIGNATURES (This application must be signed by the applicant/petitioner. If the applicant is not the owner of the property, a separate owner authorization form must be submitted – see pg. 5)

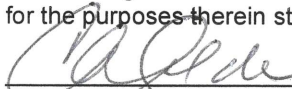


Signature of Applicant/Petitioner

Frank A Chinnici
Print name of Applicant/Petitioner

State of New York; County of Erie

On the 30th day of Sept in the year 2019 before me, the above individual appeared, personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same for the purposes therein stated.


Notary Public

(Notary stamp)

CYNTHIA ANN GOLDE
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES NOV 30, 2022

Office Use Only: Date received: 9/18/19 BAA Receipt #: 121766

Application reviewed by: _____

ECDP ZR-1 form sent to EC: 9/19/19 Hearing publication date: 10/17/19

PREVIOUS APPEAL(S):

A previous appeal to the Zoning Board of Appeals has () has not been made with respect to this property.

Previous appeals:

Date: 2014 case 1202 Type of Appeal: area variance Granted Denied _____

Date: _____ Type of Appeal: _____ Granted _____ Denied _____

Short Environmental Assessment Form

Part 1 - Project Information

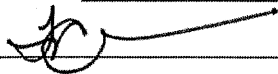
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project: Polo Grounds Condominium			
Project Location (describe, and attach a location map): 350 Quaker Road, East Aurora NY 14052			
Brief Description of Proposed Action: Increase unit density count from 46 patio homes to 47.			
Name of Applicant or Sponsor: Legacy Polo Grounds LLC		Telephone: 716-689-3300 x203	
		E-Mail: FAC@LegacyDev.com	
Address: 250 Ramsdell Avenue			
City/PO: Buffalo		State: NY	Zip Code: 14216
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			NO <input checked="" type="checkbox"/>
			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 15 acres	
b. Total acreage to be physically disturbed?		_____ 0.14 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 15 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
<input type="checkbox"/> Shoreline <input checked="" type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources?	NO	YES
If Yes,	<input type="checkbox"/>	<input checked="" type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If Yes, briefly describe:		
Storm runoff that will occur on the structure will be channeled from gutters to gutter conductors to the existing storm sewer system. Runoff from hardscapes will be collected in catch basins in the existing storm sewer system.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?	NO	YES
If Yes, explain the purpose and size of the impoundment:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?	NO	YES
If Yes, describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?	NO	YES
If Yes, describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Legacy Polo Grounds, LLC, by Frank Chinnici</u> Date: <u>9/23/19</u> Signature: <u></u> Title: <u>Member</u>		

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

Note: Please complete in triplicate. Send original and one copy (with attachments) to Erie County Division of Planning, Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202.
Retain last copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: _____

Received: _____

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: Town of Aurora

2. Hearing Schedule: **Date** 10/17/2019 **Time** 7:15pm **Location** 300 Glead Ave., E. Aurora, NY

3. Action is before: Legislative Body Board of Appeals Planning Board

4. Action consists of: New Ordinance Rezone/Map Change Ordinance Amendment

Site Plan Variance Special Use Permit Other

5. Location of Property: Entire Municipality Specific as follows 350 Quaker Road/Cheval Road, E. Aurora, NY

6. Referral required as Site is within 500' of: State or County Property/Institution Municipal Boundary Farm Operation located in an Agricultural District

Expressway County Road State Highway Proposed State or County Road, Property, Building/Institution, Drainageway

7. Proposed change or use: (be specific) Cluster subdivision density/buildable area greater than allowed by code/law.

8. Other remarks: (ID#, SBL#, etc.) SBL#175.06-2-1

9. Submitted by: Martha Librock, Town Clerk 9/19/19

300 Glead Avenue, East Aurora, NY 14052

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on _____. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. The proposed action is not subject to review under the law.
2. Form ZR-3, Comment on Proposed Action is attached hereto.
3. The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.
4. No recommendation; proposed action has been reviewed and determined to be of local concern

By the Division of Planning: _____ Date: _____

SUPERVISOR
James J. Bach
(716) 652-7590
jbach@townofaurora.com

TOWN CLERK
Martha L. Librock
(716) 652-3280
townclerk@townofaurora.com

TOWN OF AURORA
Southside Municipal Center
300 Glead Avenue, East Aurora, NY 14052
www.townofaurora.com

TOWN COUNCIL MEMBERS
Susan A. Friess
sfriess@townofaurora.com

Jeffrey T. Harris
jharris@townofaurora.com

Jolene M. Jeffe
jjeffe@townofaurora.com

Charles D. Snyder
csnyder@townofaurora.com

SUPT. OF HIGHWAYS
David M. Gunner
(716) 652-4050
highway@townofaurora.com

Code Enforcement Officer
William R. Kramer
(716) 652-7591
building@townofaurora.com

ASSESSOR
Roger Pigeon
assessor@townofaurora.com
(716) 652-0011

DIR. OF RECREATION
Christopher Musshafen
(716) 652-8866
chris@townofaurora.com

TOWN ATTORNEY
Ronald P. Bennett

TOWN JUSTICE
Jeffrey P. Markello
Anthony DiFilippo IV

HISTORIAN
Robert L. Goller
(716) 652-7944
historian@townofaurora.com

FAX: (716) 652-3507
NYS Relay Number:
1(800) 662-1220

Legacy Polo Grounds LLC
250 Ramsdell Ave
Buffalo, NY 14216

9/19/2019

RE: Single Family Residence

Mr. Chinnici,

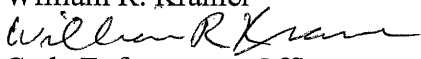
The Building Dept. has reviewed your application an additional single family residence on Cheval Rd. in the Polo Grounds complex. We have denied your application because the proposed building will put you above the number of single Family units that were approved by the Town of Aurora Zoning Board of Appeals on July 17, 2014as part of Case #1207. We therefore request that you apply to the Town Zoning Board of Appeals for an area variance if you wish to continue with this project.

Zoning Bd. Case #1207- Allowed 22 single family residences.

Request- 23 single family residences.

Variance- 1 single family residence

If you wish to pursue this matter further you must apply to the Town of Aurora Zoning Board of Appeals for an Area Variance. You must include your application, application fee, and any information you need to support your need for a variance from the Town Code. If you have any questions contact us at 652-7591.

William R. Kramer

Code Enforcement Officer

BUILDING DEPARTMENT
Town of Aurora/Village of East Aurora
300 Gleed Avenue, East Aurora, NY
Phone (716) 652-7591

Permit # _____
 Reissued _____
 Date _____

APPLICATION FOR BUILDING PERMIT

Please check one: New Building Addition Alteration/Renovation Fence
 Accessory Building Accessory Structure Generator Other _____

Property Owner Name Legacy Polo Grounds LLC Phone # 689 3300 x203
 Property Address Cheval Rd
 SBL # 175.06-1-3 Zoning District R.2
 Applicant (if not Owner) _____ Phone # _____

1. Brief description of request/intention for building permit: Construct Single Family structure
2. Use: Residential Commercial Occupancy/Occupancy Load: Single Family Dwelling w/ AH Garage (#47 units)
3. Construction Type: I II III IV V
4. Size of completed construction 30...ft wide 46...ft long 32...ft high Total sq ft.....1940
5. Construction Cost \$200,000
6. Name of Architect JRZ
Address of Architect _____ Phone # _____
7. Name of Contractor Legacy Bldg Co. LLC
Address of Contractor 250 Ramsdell Ave Buffalo Phone # same as above
8. Contractors GL/WC/Disability Insurance Certificates with Town & Village as Certificate holder Yes/No
9. Electrical work done, to be inspected by, and a Certificate of Approval obtained from an inspection agency approved by the Town of Aurora. Yes NA
10. DPW Action Required WATER TAP _____ SEWER TAP _____ BACKFLOW PREVENTER _____ GREASE TRAP _____

IMPORTANT

- The work covered by this application may not be commenced before the issuance of Building Permit.
- No building shall be occupied or used in whole or in part for any purpose whatsoever until a Certificate of Occupancy shall have been granted by the Building Department.

APPLICATION IS HEREBY MADE to the Code Enforcement Officer for the issuance of a Building Permit pursuant to the NEW YORK UNIFORM FIRE PREVENTION AND BUILDING CODE for the construction of buildings, additions and alterations, as herein described. The applicant agrees to comply with all applicable codes, laws, and regulations. The undersigned hereby certifies that all of the information contained in this application is correct and true.

Owner Name Legacy Polo Grounds LLC
 (Contractor and Corp/LLC must complete affidavit on back to sign as owner's agent)

Telephone 689-3300 E-mail FAC@LegacyDev.com

[Signature] _____ DATE 9/18/19

SIGNATURE OF OWNER

DATE

Town or Village	Bldg Dept	ZBA
App Fee \$ _____	Reviewed by _____	Reason _____
Permit Fee \$ _____	Appr on _____	Approved/Denied on _____
Park/Rec Fee \$ _____		Case # _____

Signature of Code Enforcement Officer

Receipt is hereby acknowledged of the sum of \$..... equal to the fees schedule established by the Town Board of the Town of Aurora NY..... TC/DTC Date: _____ Receipt _____



September 4, 2019

Reference No. 11119205

Martha Librock, Town Clerk
Town of Aurora
300 Gleed Avenue
East Aurora, New York 14052

**Re: Review of Proposed Changes to Cluster Development Plan
Legacy Polo Grounds Condominiums**

GHD has completed a review of the proposed changes to the Legacy Polo Grounds Condominium Development Plan. It is our understanding the applicant is seeking approval to increase the permitted number of dwelling units to allow the construction of one additional single-family dwelling unit along Cheval Road. Our review is based on application material submitted by the applicant and meeting minutes as held by the Zoning Board of Appeals on July 14, 2014.

It appears the proposed changes may require an area variance from the Zoning Board of Appeals. The subdivision was originally approved as a cluster development in 2007 with a permitted density that involved a maximum buildable area of 560,000 square feet with a mix of single and double dwelling units totaling 47 units. Subsequently, the subdivision was granted an area variance by the Zoning Board of Appeals in 2014 allowing a change to the permitted density that increased the buildable area to 592,000 square feet and reduced the total permitted number of dwelling units to 46. The proposed change to the permitted number of dwelling units increases the maximum buildable area to 608,000 square feet and consequently increases the permitted density of the development as currently approved. Therefore, it is recommended that the application be referred to the Zoning Board of Appeals for review and consideration of an area variance.

This constitutes the completion of our review. Feel free to contact us with any questions you may have.

Sincerely,

GHD

Gregory D. Keyser
Environmental Planner

GDK/ck/8

cc: William W. Wheeler PE
Town of Aurora Planning Board
Town of Aurora Building Department

TOWN OF AURORA

300 GLEED AVENUE, EAST AURORA, NY 14052

BUILDING DEPARTMENT

(716) 652-7591

FAX (716) 652-3507

MEMO

TO: Jim Bach & Town Board Members
FROM: Don Owens, Chairman, Planning Board
DATE: September 4, 2019

=====

The following actions were taken at the September 4, 2019 meeting of the Planning & Conservation Board:

Chairman Don Owens makes a note that he will abstain from voting and commenting on this agenda item because of his past involvement in the project.

Laurie Kutina notes that the Planning Board is in agreement to recommend the approval of the revised plan for the Polo Grounds condominiums as presented, for 47 dwelling units, which was the original as-of-right number of dwelling units, as it meets the goals of the Planning Board.

However, because of a change in buildable area square footage and based on the recommendations from Greg Keyser at GHD, Laurie Kutina moved to recommend the project be referred to the Town Zoning Board of Appeals to grant an area variance for the change in buildable area.

Seconded by Doug Crow.

Upon a vote being taken:

ayes – five

noes – none

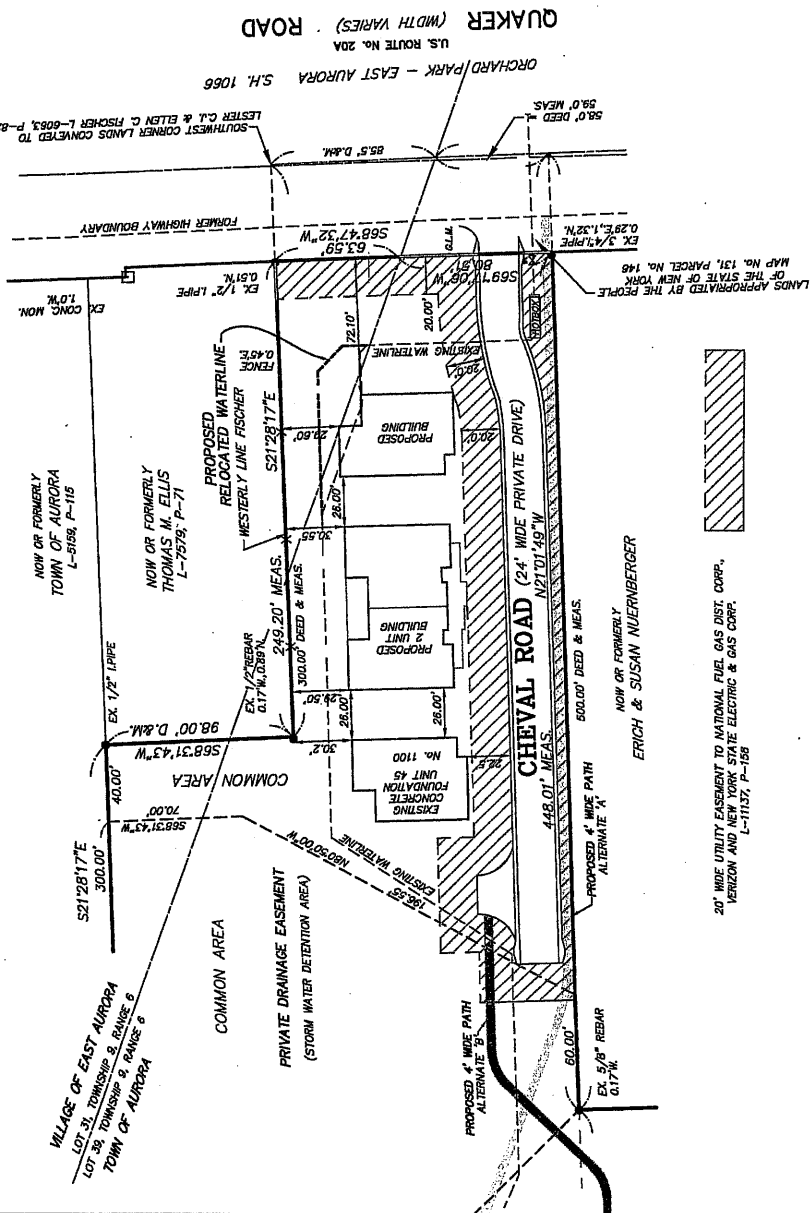
Motion Carried.

Proposed

NOTE: UNAUTHORIZED ALTERATION OR ADDITION TO THIS SURVEY IS PROHIBITED BY SECTION 5209 PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW.
 NOTE: THIS SURVEY HAS BEEN PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE.

• SET OR EX. 5/8" REBAR

VILLAGE OF EAST AURORA
 LOT 30, TOWNSHIP 9, RANGE 6
 TOWN OF AURORA



TYPICAL DOUBLE UNIT
 SCALE 1" = 30'

UNITS 19 & 20
 UNITS 31 & 32

TYPICAL SINGLE UNIT
 SCALE 1" = 30'

UNIT 1, 18, 26, 30, 37 & 45

Polo Grounds Condominium

MAP COVER 3688

TOWN OF AURORA, ERIE COUNTY NEW YORK
 BEING PART OF LOT 39, TOWNSHIP 9, RANGE 6, HOLLAND LAND SURVEY

AND

VILLAGE OF EAST AURORA, ERIE COUNTY, NEW YORK
 BEING PART OF LOT 31, TOWNSHIP 9, RANGE 6, HOLLAND LAND SURVEY

GPI

GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP
 ENGINEERING - SURVEYING - LANDSCAPE ARCHITECTURE
 4600 GORSE STREET, SUITE 100
 BUFFALO, NEW YORK 14228
 (716) 833-1844 FAX 833-4940

DATE: AUGUST 1, 2019
 JOB No. 3520
 SCALE: 1"=60'

DATE	REVISION/TYPE

MEMORANDUM OF LAW

To: Frank Chinnici
From: John Garas
Date: August 22, 2019
Re: Cluster Development Law

I am advised that a number of years ago, the Town of Aurora approved your property for a total of 47 dwelling units, consisting of a mix of single, stand-alone buildings and buildings consisting of two side-by-side dwelling units.

I am also advised that subsequent to the original approval, the mix of singles and doubles was changed and that the approved plan was reduced from 47 to 46 units.

Finally, I am advised that you are in the process of requesting approval from the Town for the construction of a double and a single, which would bring the total number of dwelling units back to 47.

You have asked my opinion as to whether the Town has the authority to grant your request to permit the construction of a 47th dwelling unit on the property.

My opinion is that the Town clearly has authority to grant your request for a 47th dwelling unit pursuant to Town Law Section 278.

The purpose of a cluster development "shall be to enable and encourage flexibility of design and development of land in such manner as to preserve the natural and scenic qualities of open lands (Town Law Section 278(2)(b)).

This purpose is accomplished in two steps. Pursuant to Town Law Section 278(3)(b) a municipality must first determine the number of "building lots or dwelling units ... which would be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements." This is commonly referred to an "as of right" development plan.

In this case the Town determined initially that a total of 47 dwelling units were permitted under the applicable ordinance.

Since the very purpose of the cluster statute is to "enable and encourage flexibility of design and development of land" Town Law Section 278 (d) affords the planning broad discretion to adjust the mix of housing in a residential development: "[i]n the case of a residential plat

or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached or multi-story structures”.

In the instant case, Section 278(d) can only be construed to give the planning board authority to adjust the mix of singles and doubles provided the maximum number of dwelling units does not exceed the “as of right” maximum number of 47 dwelling units. To limit the total number of dwelling units to less than the “as of right” number of 47 is to tie the planning board’s hands under Town Law Section 278 (d) to exercise its discretion to determine whether the as of right number is achieved by “detached, semi-detached, attached or multi-story structures”.

It therefore follows that in the instant case, the planning board has the power, in its discretion, to authorize the construction of the 47th dwelling unit.

I attach a copy of Town Law Section 278 for your reference.

| The Laws Of New York (/LEGISLATION/LAWS/ALL) / Consolidated Laws (/LEGISLATION/LAWS/CONSOLIDATED) / Town (/LEGISLATION/LAWS/TWN) / Article 16: Zoning And Planning (/LEGISLATION/LAWS/TWN/A16) /

PREV

SECTION 277

Subdivision Review; Approval Of Plats;
Additional Requisites
(/Legislation/Laws/TWN/277/)

NEXT

SECTION 279

Subdivision Review; Record Of Plats
(/Legislation/Laws/TWN/279/)

Section 278

Subdivision review; approval of cluster development

Town (TWN)

1. Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local 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.

(b) "zoning districts" shall mean districts provided for in section two hundred sixty-two of this article.

2. Authorization; purpose.

(a) The town board may, by local law or ordinance, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law or ordinance. Such local law or ordinance shall also specify the zoning districts outside the limits of any incorporated village in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the town. Provided, however, that in granting such authorization to the planning board, the town board may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law or ordinance authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning

ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts.

(c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section two hundred seventy-six of

this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the town clerk, who shall make appropriate notations and references thereto on the town zoning map required to be maintained pursuant to section two hundred sixty-four of this article.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands.

PREV
SECTION 277

[Subdivision Review; Approval Of Plats; Additional Requisites \(/Legislation/Laws/TWN/277/\)](#)

NEXT
SECTION 279

[Subdivision Review; Record Of Plats \(/Legislation/Laws/TWN/279/\)](#)

The following is a chronological listing of legislation of the Town of Aurora adopted since January 1, 2003, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Consult municipal records for disposition of prior legislation.

§ DL-1 Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
LL No. 1-2003		Moratorium on retail building permits and variances	NCM
Ord.	1-13-2003	Ponds	Ch. 87
Ord.	5-26-2003	Alarm systems amendment	Ch. 35
	8-11-2003	Dog licensing and impoundment amendment	Repealed by LL No. 8-2010
	10-27-2003	Building permits, sewers, subdivision of land, water, and street acceptance amendments	Ch. 44; Ch. 93; Ch. 99 (repealed by LL No. 5-2017); Ch. 113; Ch. A11
	11-24-2003	Parks amendment	Ch. 84
LL No. 1-2004	9-13-2004	Zoning amendment	Repealed by LL No. 4-2017
LL No. 2-2004		Moratorium on subdivision of land	NCM
LL No. 3-2004		Surcharge on vehicle and traffic violations	NCM
LL No. 1-2005	3-14-2005	Dogs at large	Repealed by LL No. 8-2010
LL No. 2-2005	9-12-2005	Historic property tax exemption	Ch. 101, Art. IX
LL No. 1-2006	2-13-2006	Zoning Map amendment	NCM
LL No. 2-2006	2-27-2006	Sex offenders: residency restrictions	Ch. 94, Art. I
LL No 1-2007	7-9-2007	Officers and employees: residency and other requirements	Ch. 19, Art. I
LL No 2-2007	7-9-2007	Subdivision of land amendment	Repealed by LL No. 5-2017
LL No 3-2007	7-9-2007	Farming: right to farm	Ch. 62, Art. I
LL No 4-2007	11-13-2007	Officers and employees: residency and other requirements amendment	Ch. 19, Art. I
LL No 5-2007	12-10-2007	Sewers amendment	Ch. 93
LL No 6-2007	12-10-2007	Stormwater management; flood damage prevention amendment; site plan review amendment; subdivision of land amendment; zoning amendment	Ch. 68; Ch. 95; Ch. 96; repealed by LL No. 5-2017; repealed by LL No. 4-2017
LL No. 1-2009	2-9-2009	Dog licensing and impoundment amendment	Repealed by LL No. 8-2010
LL No. 2-2009	7-13-2009	Open development areas	Repealed by LL No. 2-2012
LL No. 1-2010	1-11-2010	Building permits amendment	Ch. 44
LL No. 2-2010	2-8-2010	Moratorium on wind energy conversion systems	NCM
LL No. 3-2010	7-12-2010	Dogs and other animals: dogs at large amendment	Repealed by LL No. 8-2010
LL No. 4-2010	7-12-2010	Parks amendment	Ch. 84
LL No. 5-2010	8-24-2010	Retirement incentive program	NCM
LL No. 6-2010	9-13-2010	Moratorium on wind energy conversion systems	NCM
LL No. 7-2010	9-30-2010	Zoning Map amendment	NCM
LL No. 8-2010	12-13-2010	Dogs and other animals	Ch. 55
LL No. 9-2010	12-13-2010	Zoning amendment	Repealed by LL No. 4-2017
LL No. 1-2012	1-23-2012	Subdivision of land amendment; zoning amendment	Repealed by LL No. 5-2017; repealed by LL No. 4-2017
LL No. 2-2012	2-13-2012	Open development areas	Repealed by LL No. 5-2017
LL No. 3-2012	3-26-2012	Fire prevention and building construction: Building Department and permits amendment	Ch. 65, Art. I
LL No. 4-2012	9-5-2012	Abolishment of Receiver of Taxes position	NCM
LL No. 1-2013	7-8-2013	Zoning amendment	Repealed by LL No. 4-2017
LL No. 1-2014	4-14-2014	Zoning Map amendment	NCM
LL No. 1-2015	6-8-2015	Compensation	NCM
LL No. 2-2015	10-13-2015	Moratorium on open development area applications	NCM
LL No. 3-2015	10-13-2015	Moratorium on subdivision of land	NCM
LL No. 4-2015	10-26-2015	Cold War veterans exemption	Ch. 101, Art. IVA
LL No. 1-2016	3-28-2016	Penalty amendments	Ch. 35; Ch. 47; Ch. 59; Ch. 65, Art. II; Ch. 70; Ch. 81; Ch. 87; Ch. 91; Ch. 108; Ch. 109, Art. II; Ch. 109, Art. III; Ch. 116 (repealed by LL No. 4-2017)
LL No. 2-2016	4-11-2016	Moratorium on open development area applications extension	NCM
LL No. 3-2016	4-11-2016	Moratorium on subdivision of land extension	NCM
LL No. 4-2016	7-11-2016	Moratorium on solar power projects	NCM

Enactment	Adoption Date	Subject	Disposition
L.L. No. 5-2016	10-18-2016	Moratorium on subdivision of land extension	NCM
L.L. No. 6-2016	10-18-2016	Moratorium on open development area applications extension	NCM
L.L. No. 1-2017	1-9-2017	Taxation: tax bill enclosures	Ch. 101, Art. X
L.L. No. 2-2017	1-9-2017	Moratorium on solar power projects extension	NCM
L.L. No. 3-2017	3-13-2017	Solar energy systems	Ch. 95A
L.L. No. 4-2017	3-13-2017	Zoning	Ch. 116
L.L. No. 5-2017	3-13-2017	Open development areas repealer; subdivision of land and open development area	Ch. 79; Ch. 99 ✓
L.L. No. 6-2017	8-14-2017	Zoning Map Amendment	NCM
L.L. No. 1-2018	1-22-2018	Taxation: Veterans Tax Exemption Amendment	Ch. 101, Art. IV
L.L. No. 2-2018	10-9-2018	Taxation: Senior Citizens Tax Exemption Amendment	Ch. 101, Art. I
L.L. No. 1-2019	4-8-2019	Flood Damage Prevention	Ch. 68

ZONING BOARD OF APPEALS
TOWN OF AURORA

DECISION

RE: APPEAL NO. 1207

A hearing on the above Application of Legacy Polo Grounds, LLC of 250 Ramsdell Ave., Buffalo, NY 14216, petitioner, having been called before the Zoning Board of Appeals Code of the Town of Aurora, in the Town Hall, 300 Gleed Avenue, on the 17th day of April, 2014, after due notice published in the East Aurora Advertiser as prescribed in Section 267-a, Subdivision 7 of the Town Law and Section 116-61 F of the Code of the Town of Aurora, was held at said time and place.

There were present:

Wayne Nowocin
Albert Salter
Donald Aubrecht
Jay Marshall
Rod Simeone

The Secretary read the Notice of Public Hearing and the Affidavit of Publication which were duly marked as exhibits herein.

Petitioner seeks a variance to construct up to 23 single family homes and 12 two family homes in an R-2 Zone at the Legacy Polo Grounds (Farrier Lane, Registry Lane and Martingale Court) SBL # 176.06-2-1.

Frank Chinnici, agent, and Peter Sorgi, attorney appeared.

The original number of units permitted to be constructed was 13 single family and 17 double units for a total of 47 units. Subsequently, on July 22, 2013 a settlement agreement between Legacy Polo Grounds LLC and the Town of Aurora was entered into in the Supreme Court, State of New York. The agreement permitted a combination of 15 single units and 16 two family homes to be constructed for a maximum density of 47 units. At the time of the settlement deliberations, the Town prepared a chart of the combination of single and two family units which could be constructed on the site which would not increase the constructible area beyond 560,000 square feet.

Attorney Sorgi outlined the requested variance sought. The petitioner seeks to increase the allowable buildable area from 548,000 square feet to 608,000 square feet. When originally approved in 2007 for cluster development, the density determination was based on being the equivalent of a non-cluster, as-of-right development which resulted in 47 residence units permitted to be constructed. The mix of units 13 single and 17 two family

units was permitted. Currently constructed are 15 single and 7 two family units. The current request of potential buyers is for single units.

Attorney Sorgi offered several thoughts regarding the potential effects of the requested variance. He offered that there would be no encroachment into the dedicated open space; there would be no increase in density; there would be no increase in utility requirements; there would be no change to the neighborhood; the variance has the support of the neighbors; a benefit would be the sooner completion of the construction; there is no other alternative to "fill up" the available units; the need is market driven. No subdivision plat has been filed; the parcels are recorded as construction is completed.

Town Attorney Ronald Bennett appeared.

Attorney Bennett voiced opposition to the requested variance. There is a pending lawsuit started in May of 2013. The Town filed a motion to dismiss the action. The Town Board offered to permit the construction of 15 single and 16 two family units in July of 2013, with the stipulation that there would be no encroachment outside of what was presented in 2007. The suit has been adjourned nine times since May of 2013. Attorney Bennett reviewed several characteristics of the development as defined in the Environmental Assessment Form filed for the project, including the limit of 560,000 square feet of constructible area; the area to be disturbed is 6 acres, Exhibit "F" concerned the identification of the wetlands on the site. To change the arrangement of the units from that of the plat originally filed is an issue with the Town. Further presentation regarded the derivation of the density of the 47 units of the mix agreed to as the desired arrangement. Attorney Bennett indicated that there is no current map showing the intended arrangement of the units as would be built per the variance requested. The records file does not have any wetland permit or a letter of determination of jurisdiction from the Army Corps of Engineers.

Attorney Sorgi offered comments regarding the petitioner's position on the wetlands, lot size, and a need to encourage flexibility in design.

No one else appeared.

Discussion was had by the Board regarding the lack of correspondence from the Army Corps of Engineers pertaining to the wetland and the lack of a layout diagram of the proposed site under the variance request. The Board requested that information from the petitioner.

Albert Salter made a motion to table the Case until the May meeting of the ZBA. Jay Marshall seconded the motion. Albert Salter, Wayne Nowocin, Davis Heussler, Jay Marshall and Don Aubrecht voted aye. The Case was tabled.

On May 15, 2014 the Case was discussed.. There were present James Whitcomb, Rod Simeone, Wayne Nowocin and Don Aubrecht.

Receipt of the letter of abandonment of the subdivision map was received. A letter of isolated wetland determination, and therefore no jurisdiction from the Army Corps of Engineers was received.

The Case was tabled until the June meeting of the ZBA.

On June 19, 2014, the hearing was reconvened. The Board Members present were Wayne Nowocin, Davis Heussler, Rod Simeone and Donald Aubrecht.

Attorney Peter Sorgi and Agent Frank Chinnici appeared. Mr. Sorgi reiterated the appeal that the 47 units previously agreed to in a mix of 15 single units and 16 two family units was still valid with the 23 single units and 12 double units requested based upon an assumed variance increase in the permitted constructible area from 565,000 to 608,000 square feet. Mr. Sorgi further reiterated that there is no negative effect of the proposed change demonstrated; that the development would be built sooner with the change in the number of the unit type mix.

Mr. Anthony Daniel appeared. Mr. David Schultz appeared, speaking in favor of the petition. Mr. Charles Snyder appeared, speaking in opposition to the petition, asked "Where is the hardship?" Dr. Leonard Bradley appeared, speaking in favor of the additional single units, noting there is no change in area of the green space to be provided. Susan and Rick Neurnberger, neighbors, appeared. They live in the house immediately adjacent to the Legacy Polo Grounds to the West. They requested that none of the proposed units still to be constructed be located closer to Big Tree Road than the existing unit number 1 already in place.

Town Attorney Ronald Bennett appeared. Mr. Bennett spoke to reiterate the history of the decisions regarding the development from the Town's vantage point and to reiterate the Town's objection to the proposed variance sought. Pertaining to the action in court that is pending between Legacy Polo Grounds LLC and the Town of Aurora on the number of units to be permitted, the Town has filed a notice to dismiss the suit. The motion is pending. Mr. Bennett offered that cluster development is intended to preserve the natural and scenic open lands. The density of the development is to be equal to that which would be constructible under the traditional subdivision arrangement. He further offered that the developer originally proposed 560,000 square feet of developable land area, and in seeking an adjustment to the mix of single and two family units to be constructed, the 560,000 square foot constructible area should not be exceeded.

Frank Chinnici spoke. He referenced the chart of the mix of units permitted. He offered that "The developer is entitled to build any combo". Mr. Chinnici presented a plat sketch of the proposed development indicating the change to the number of units sought (Exhibit #20). The sketch showed the number of units already constructed, or is under construction, and the number of proposed single and two family units proposed to be

constructed in the future. The existing or under construction units are 8 two family and 15 single family. The proposed units are an additional 4 two family and 7 single family units for a total of 46 units.

David Schultz spoke. Charles Snyder spoke, offering from the perspective that the density per the code should remain at the 560,000 constructible area and that the developer is "free to move up and down the chart of the mix of single and double units.

Attorney Bennett noted that an increase in the density sought is a benefit to the developer.

A discussion among the Board members indicated that the proposed development layout drawing should be created with further detail indicating the ability to construct the proposed 46 units of 12 two family and 22 single family units can be built within the existing constructible area defined.

Davis Heussler made a motion that the Case be tabled for one month to permit the detailed drawing indicating the proposed layout in detail be submitted and to further define the question of the variance sought.

Rod Simeone seconded the motion. All present voted yea. The case was tabled.

On July 17, 2014, the case was reconvened. The Board members present were Albert Salter, James Whitcomb, Rod Simeone, and Donald Aubrecht.

Frank Chinnici, Agent and Shawn Hopkins, attorney appeared

Attorney Hopkins repeated the request for an area variance. The build out plan seeks to construct 12 two family and 22 single family units. The original development plan sought 13 single family units. The market demand is now favoring more single family units and there is less interest in two family units. Attorney Hopkins submitted additional petition signatures from the current residents of the development along with a Petition Tracking document indicating 31 favorable responses of 33 residents responding (Exhibit #23). The pending law suit filed by the Polo Grounds challenging the Town's allowable allocation of the number of single and two family units has been withdrawn and a filing of discontinuance is being done.

Attorney Hopkins further stated that the residents wish to see the community built out. He further stated that the units to be constructed will not go outside of the original constructible area, and that in the petitions opinion there are "No detriments" of what is being proposed. He further reiterated the criteria of the proposed, including the petitioner's belief that there are no new impacts regarding the SEQR.

Attorney Bennett spoke regarding the Town's position that the area variance is in contradiction to the ordinance. Subdivision Law, Article 278 proscribes the expectations of cluster development. The Town intends that the density permitted under a regular subdivision is to be maintained under the cluster development approach. The

constructible area agreed to initially is 560,000 square feet and this remains as the permitted area to keep the density of the site development equivalent to a normal subdivision. Attorney Bennett further reiterated the request that the law be followed, that the density of the development is a major factor, that the homes should not be placed in a closer development; the "...density should be kept".

Sue Friess, a Town of Aurora Board Member, spoke. She indicated the need to stay within the density of 47 units within the 560,000 square foot constructible area. She objects to the variance which would increase the constructible area. She stated you "...can't just make up space." The density of 47 units was based upon the build able space previously determined. She recharacterized the variance request as a request to build (2) more single units than the code permits (within the existing 560,000 square feet constructible area.

Ray Peters of 2450 Farrier Lane spoke. He noted that in the 11 months he has lived there, a number of visitors have come looking for single homes.

Arlene Danial of 2150 Farrier Lane spoke. She expressed hope that the Board would favorably consider the variance request.

Anthony Danial spoke. He expressed that if it just two additional single units, the construction could be done. He hoped the request would be favorably considered; in his opinion, there was no detriment.

Joe Gerbasi of 4850 Martingale Court spoke. He expressed the need to finish the construction of the development. He expressed concern that the community is unable to involve the VA, or Fannie or Freddie May unless greater than 75% of the development has been sold, permitting the creation of the tenants association. He stated there is a need to form a condominium association.

Sue Friess spoke again, acknowledging the frustration she heard in the residents' voices.

Frank Chinnici spoke. He restated his request for a variance which would permit him to construct 22 single family units and 12 two family units for a total of 46 units to be constructed.

At a duly convened meeting held on the 17th day of July, 2014, and after said public meeting, the Zoning Board of Appeals finds as follows:

FINDINGS

This is a Type II action pursuant to Article 8 of New York State Environmental Conservation Law and the regulations promulgated there under, Part 617 of Title 6 of the New York Code of Rules and Regulations (SEQR). Petitioner seeks to construct an addition of two single family units with a total of 22 single family units and 12 double units for a total of 46 units. Per the required standards of the Town Code, Chapter 79,

Open Development Areas, the constructible area of the parcel is limited to 560,000 square feet, permitting 12 two family units and 20 single family units, for a total of 44 residence units. A variance permitting the construction of two additional units is requested.

James Whitcomb made a motion to grant the petitioner a variance to increase the number of residence units by two (2), with the following conditions:

- 1) The agreed to existing constructible area of 560,000 shall not be exceeded. The existing constructible area is as shown in Exhibit #22.
- 2) There will be no additional residence units constructed closer to Quaker Road than existing unit #1
- 3) The arrangement of single and two family units is to be similar to that indicated in Exhibit #22.

Al Salter seconded the motion.

On a roll call, the vote was:

Albert Salter	Aye
Rod Simeone	Nay
Donald Aubrecht	Aye
James Whitcomb	Aye

The vote is 3 Ayes and 1 Nay. The vote carries.

RESOLVED, that the variance applied for by Legacy Polo Grounds, LLC, petitioner, in the Application No. 1207, be and here is granted.

Dated: East Aurora, New York
July 17, 2014



Donald E Aubrecht
Acting Chairman

MINUTES OF AN ADJOURNED HEARING AS HELD BY THE
ZONING BOARD OF APPEALS OF THE
TOWN OF AURORA

July 17, 2014

The hearing was called to order by Acting Chairman Donald Aubrecht, with the following Board members present:

James Whitcomb
Albert Salter
Donald Aubrecht
Rod Simeone, Alternate

Others Present: William Kramer, Code Enforcement Officer
Absent: Wayne Nowocin
Davis Heussler

**CASE #1207 – Frank Chinnici aaf Legacy Polo Grounds, (Farrier Lane, Registry Lane,
Martingale Court, East Aurora, NY**

This hearing is a continuation of the hearing held on June 19, 2014. Attorney Sean Hopkins accompanied Mr. Chinnici. Mr. Ronald Bennett, Town Attorney, was in attendance representing the Town. Mr. Simeone is a voting member of tonight's Board in the absence of Mr. Nowocin. Mr. Whitcomb stated that Mr. Aubrecht would be chairing this hearing since he had not been at prior hearings on this case, but noted he would be voting.

Aubrecht - This request is a variance to adjust the mix of units, doubles and singles, from the original count. We'll start with Mr. Chinnici and Mr. Hopkins.

Hopkins - Good evening, my name is Sean Hopkins and I'm from the law firm of Hopkins & Sorgi. I'm here with Mr. Chinnici regarding the area variance for Polo Grounds. There have been previous meetings and presentations. For purposes of tonight's presentation I want to focus on additional information we have and summarize our position. We have additional information from the request received at a previous meeting. First, is a plan that would show the build-out of this project if the relief is granted by the Zoning Board of Appeals. What this shows is a maximum of 22 single family homes. If we build 22 single family homes...as you know the approved density is 47 units...in order to stay inside the buildable area per the Town Board we would be capped at 46 units. 22 single family homes is what we're asking for. When the Town Board originally approved this project in 2007, it was 13 single family homes based on the allowable calculation contained in the zoning code. The Town Board did agree to give us two more additional single family units last year and we appreciate that. We are now coming back

requires you to look at five different criteria. (Mr. Hopkins then went through all five criteria.) When we came up with that original layout that was approved by the Town Board in 2007, Frank thought that allocation was probably going to work. The market has changed. The demand for single family units is greater. We want to satisfy the demand for both single and double family units.

Aubrecht – I have a detail question from looking at the layout. In doing a comparison to what I think has been constructed so far, (referring to a submitted drawing) the red indicates an 8” sanitary sewer line. Then to the west of that is a 10” water line, which is indicated by the blue line. Should we be concerned about how close the foundations may be to that infrastructure construction and to where the sidewalk is indicated?

Chinnici - When the engineer did this particular layout he didn't spend a lot of time trying to fit it in precisely with respect to the existing utilities. They (houses) were simply placed on the map to make sure there was sufficient separation between the units to show that they would work. We have all the latitude we need to move around a little bit. For example, this building would likely slide back a little bit and to the right as to avoid that line. The worse case scenario is that some of those lines could actually be moved.

Aubrecht – What kind of a distance would you expect to maintain between the water line and the basement?

Chinnici – Whatever our engineers recommend.

Hopkins – You don't want a building over the water line.

Chinnici – We have the ultimate ability to flip the building so that just the driveway would be over the water line.

Salter – Mr. Hopkins, you initially started off saying 46 units then you went to 47 units.

Hopkins – The original density that was approved by the Town Board in 2007, based on the clustering calculation, was 47 units. So pursuant to the request that this Board made last month, Frank went back to his drawing board and came up with a layout that would show what he would like in terms of an allocation of single family homes and two-family homes. What that layout confirmed is that if the project consists of 22 single family homes, it is going to result in a reduction in the overall density by one. We would be down to 46 total units.

Chinnici – That is happening because in our original plan this area here (pointing to an area on exhibit 22) that had five houses along this north side of the circle. But we are only showing four

there now. The reason was because if we were to build all singles there it would be a really tight fit. So then if it went that way we would lose that one unit for the time and go down to 46. If we went with a paired unit in there, we could probably make it work. At the end of the day it was really a choice that we made if we wanted to do singles up here. There's really not enough room to do five single houses there.

Salter – My other question is...the two houses or three houses that are up there...the plan I have shows four and I grant that this plan is older.

Chinnici – This is another example where we were trying to show how we could get that last unit in there. Ideally that is what we would like, but in keeping with the discussion from the prior context of discussion, we tried to keep that within that building envelope.

Hopkins – That would be outside what was the original buildable area. That's why we're not showing it.

Salter – Can you get the 47 units in without using that area?

Hopkins – No. If we take that out, it's 46 units.

Salter – So you are proposing to go with 46?

Hopkins – 46 if there are 22 single family homes. Keep in mind, if it's a different allocation it still could wind up being 47, because then you could make it fit.

Chinnici – If we work with 22 singles plus 12 doubles. If we did 13 doubles that would be 26 units and that would leave only 21 singles to get to 47 and that we could probably fit.

Whitcomb – Before this Board you have to decide what horse you're riding.

Chinnici – The horse we're riding is we want a maximum of 22 single family home permits.

Hopkins – We would agree to a condition that if it's 22 singles that the maximum density would be 46 instead of 47.

Chinnici – We don't know what people are going to want in the future. We don't want to have to come back and do this again.

Salter – When you have single homes you have essentially required more allowable land than if you have a double home, is that correct?

Chinnici – If you were building according to standard subdivision criteria. The whole point of the clustering ordinance was to calculate the density you could get under standard subdivision requirements, take that maximum density and put them in a smaller area and aggregate the green space. Even though we are asking for an area variance from 560,000 sq.ft. to 596,000 sq.ft., that's a formula calculation, but we are not impacting any more dirt under this scenario than under the prior scenario.

Hopkins – The infrastructure stays exactly the same.

Chinnici – It's an area variance in name only because it's based on the formula used to calculate density under that current zoning ordinance for a standard Residential 2 subdivision. That's why there's this bit of controversy, at least on our end, is that once you get to a maximum density it shouldn't matter whether it's a single or a double.

Aubrecht – I'd like to give others an opportunity to speak.

Someone – How many existing homes are there now?

Chinnici – We have 29 homes that are sold and closed and that are occupied. We currently have four homes under construction and we have permits for two more. So we have three two-family homes that are permitted, but are not complete. That would bring us to 34 total units. Then we have two contracts for single units that would bring us to 36 total. The two singles (contracted) haven't been able to get a building permit and that's why we're here.

Someone – Of the 29 sold, how many are singles?

Chinnici – We have 15 singles.

Salter – Why can't you get a building permit?

Hopkins – Because we've met the threshold of 15 single units.

Chinnici – Even though there is a chart that we've been held to, there are combinations that would allow us to go to 16 single units, but the Town Board took the position that they wouldn't allow us to go past 15.

Someone – So if there are 15 singles in the 29 number, then there are 7 doubles.

Hopkins – Correct.

Simone – What are the four under construction?

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Hopkins – Two two-family homes (4 units).

Whitcomb – Have there actually been a denial of the two permits under contract?

Chinnici – One denial

Whitcomb – Mr. Kramer, is that denial in the record? I haven't seen it in the record I have.

Kramer – It's been discussed. It was brought up at the last meeting.

Whitcomb – I have jurisdictional problems here. Without a denial in the file by the Building Department, I don't know that we have jurisdiction...

Kramer – We have not denied the (building permit) application, but it's my understanding that they can still appeal.

Whitcomb – Is that denial in the file?

Hopkins – You're hearing from the building inspector....we weren't going to demand a written explanation because he's following the chart.

Whitcomb – Technically speaking, that's required before you come before us, before we have jurisdiction. You have to have a denial of a building permit based upon an ordinance in order for the ZBA to have jurisdiction. There has to be an appeal from something. That needs to be in the file. I'd like to hear from the Town. I've got to hear an explanation as to why what you propose is not acceptable to the Town. I need to understand the Town's position.

Bennett – Ronald Bennett, Town Attorney. I don't want to spend too much time because we have put in the record the position of the Town. It starts by every time there's a variance requested it is contrary to some law or some ordinance. In this particular case, the Town dealt with this some five years and tried to develop it so that it maintained the rural character of the Town. We start by stating the law – we explained this last time, so I won't get into too much detail. Section 278 of the Town Law permits a different type of subdivision. With Cluster Development the intent was to be able to approve a plan that would put dwellings, not necessarily on individual lots, but in a cluster development. The intent of 278 is in order to landscape, in order to preserve the natural and scenic qualities of open land. The density factor was a main consideration of the Town Board, as is the law and what is now in our code. The law says the purpose of the cluster development shall be to enable and encourage flexibility in the design and development of the land in such a manner as to preserve the natural and scenic qualities of the land. The Town has steadfastly maintained its density and the Town Board

reflects that in its action in the approval of this development. A cluster development shall result in a permitted number of dwelling units which shall in no case exceed the number which would be permitted if the land was subdivided into lots conforming to the minimum lot size density requirements of the local law. In this case, after much ado, we came up with and the developer showed us where they could have development. Of the whole development there was 560,000 sq.ft. It wasn't our determination, it was the determination of the developer. We already put in the record the combination (of singles and doubles) that was developed by the developer and presented. The density factor here, by law, says 16,000 sq.ft. for a single and 20,000 sq.ft. for a double. This is based upon the existence of sewer and water. Initially the Town Board approved 13 singles and 17 doubles which equaled 47 units. 47 units was a density factor of 560,000 sq.ft. which was the maximum which the developer told us and presented and was approved for the building of this development. They presented a chart that showed what would be within that 560,000 sq.ft. requirement. The Town is steadfast in its desire to maintain the density that is required by law. The law says "shall", not may. To the Town Board, this request is an undesirable change. You would create a precedent if this request were to be granted. Could this be achieved by some other method? It could be by staying within the law. He came up with the 560,000 sq.ft. when he developed this. Is it substantial? If it violates and is not in conformity with the NYS Town Law 278 and the Town of Aurora Cluster Development code, then, yes, it is substantial because it is going over what we permit. How much is much? Where do we stop? The adverse affect is on the overall town. You are going to set a precedent when you say one no longer has to comply or follow the density that was approved by the Town Board in the development. The difficulty is self-created. I understand that the developer tries to project how many singles, how many doubles. The market can change. The one thing that never changes is the density. It's the position of the Town that if we are going to follow the law and we're going to have this town as we want it, then the density is a major factor in any kind of development within the Town. Open areas are what we want. That is why we have substantial subdivision laws that provide for density factors. When we take that law and apply it to cluster development for the benefit of a developer, we understand the overall structure of the water and the growth, is much more economical than if it were a subdivision such as the Reed Hill subdivision. It's the position of the Town that it followed the law and did what it had to do.

Simeone – It's my understanding that the lawsuit has been withdrawn by the petitioner?

Bennett – That's correct. It was a main concern that I had in presenting to this Board that there was a pending case and most times you can't proceed until a lawsuit is resolved.

Friess – Susan Friess, Town Board member. I have a couple of items that I'd like to make clear. There have been so many gyrations of this request going back between the Town Board and the Zoning Board and different plot plans. There are a whole bunch of differences in each plan that has come before the various boards and that is why a lot of the confusion comes up. We haven't all been looking at the same thing. It's my understanding that when the application/request came to the ZBA initially it was based on the request that they would stay within the density of 47 units and that they were requesting an area variance so the footage went up from 560,000 buildable sq.ft. to whatever number was needed to get the extra units in. Fundamentally, I disagree with those two premises. First, I don't believe the ZBA can make up buildable space and change the fact of the case and say, yes, it really is 560,000 sq.ft., but we're going to allow you to have more. It's either buildable space or it's not. Second, I disagree with is the density of 47. The density calculation comes from this chart which came from the developer. It takes your buildable space and then determines based on 16,000 sq.ft. for a single and 20,000 for a double, how many units you can build. The result of the initial calculation was 47 when he chose 13 single and 17 double. To now say he wants additional units and is staying under the 47 is an incorrect statement. As I see it, in front of you is a request to build two more single units than he can by code. This chart says he can build 20 single units and 12 doubles. The request is for 22 singles and 12 doubles as I see it. The 47 does not make sense to me and you can't just make up area and say you have 600,000 sq.ft. to use. I'm asking that the development be kept within the envelope. He needs a variance because the code says, by the chart, he can only do 20 singles and 12 doubles. That's for you to determine how it impacts the Town based on the criteria put forth by law.

Aubrecht – To this point in time, setting aside the current request, everything that has been built has been built per the original agreement except for one lot, correct?

Friess – No, per the original agreement it was 13 singles and 17 doubles. The Town Board later allowed them to move up the chart to 15 singles and 16 doubles. The Town Board can only stay within the law, so we could not give the developer what he is asking for here because it is not within the law.

Hopkins – The reason we were able to go up to 15 single units is because it would not cross the 560,000 sq.ft.

Aubrecht – The agreed to constructible area was maintained except for the one unit.

Hopkins – That's why we're giving up the one unit if we build out the rest as singles because it would go outside the buildable area.

Chinnici – This business about whether we have 560,000 sq.ft, 600,000 sq.ft.; it is a formula. The land area impacted, the space in which homes will be built will be absolutely identical if we build it in singles versus doubles.

Whitcomb – I disagree with you. The density has changed.

Aubrecht – Up until this point in time everything is per agreement...

Hopkins – Per the chart.

Aubrecht – The density has been maintained as per the agreement, per the chart, by law.

Hopkins – More importantly, it's not about the density, it's about the allocation.

Aubrecht – If you took the density over the total site, your argument would be 46 is maintaining the same density, same buildable area. The point I would make, is the question before us, is that the density within the remaining area to be constructed that's where the density is being increased. It is. Square footage per area of land is being increased and in this sense, your basis of your variance request is to say that the 560,000 should be increased to a certain larger number and I think what you're really asking for is that the 16,000 sq.ft. and the 20,000 sq.ft that is the basis for calculating the constructible area and number of units, you're asking that those numbers be smaller. And that's where the density becomes greater.

Friess – They are asking for two more units than is allowed by the chart which is the code. It's based on the fact that they are asking to go against the chart and need a variance to add two more single units.

Aubrecht – I believe the ask is for two more singles.

Chinnici – In practicable terms, that is exactly correct. I agree that right now we can go up to a maximum of 20 single family homes and we're asking to go to 22.

Hopkins – The chart gives you your maximum number of units. The maximum square footage in the as-of-right plan is 560,000. Under our proposal, which would be a maximum of 22 single units and 12 doubles, would require 591,000 sq.ft. Based on the chart we are 31,000 sq.ft. over, which is 5.1%. It's a semantic argument.

Aubrecht – Your ask is based upon where you started before you began any construction. There is construction in place that is fully compliant. Your ask should be as going forward from this point in time and not going back to the beginning.

Hopkins – We're not asking the Town Board to go back and change the chart. We agree with the chart. We still haven't heard what the detriments are. We're not asking for bigger footprints or smaller green space.

Friess – Someone asked why the Town Board denied additional units. The plan the Town Board received and looked at had development outside of the buildable envelope which would have a negative effect on a neighboring property. It was not the same as what you are looking at. I hope that if you do approve this variance, that the units stay within the buildable envelope approved by the Town Board.

Hopkins – The 46 units respect that plan. We're in agreement with that.

Aubrecht – Does anyone else would like to address the Board with regard to this request?

The following persons appeared and spoke in favor of the variance:

Ray Peters, Farrier Lane, E. Aurora

Arlene Daniel, Farrier Lane, E. Aurora

Anthony Daniel, Farrier Lane, E. Aurora

Joseph Gerbasi, Martingale Court, E. Aurora

Chinnici – We've responded to every request before the various boards.

Hopkins – We're actually willing to reduce the density.

Simeone – Just a general question to the residents...the petition that we saw said 47 units and they are asking for 46...are you all aware of that?

Chinnici – If we build 46 units then the common charge is split 46 ways, instead of 47, so that will be a consideration....(could not hear the rest of Mr. C's statement)

Whitcomb – If we approve it at 46 that is what it is. Let's make it clear. You have one proposal before this Board and that's the proposal you're going to go on. If you're going to change it then we're going to table this and we'll have you come back next month and give us something we actually can vote on.

Chinnici – I think we've already stated there is a combination of singles and doubles which will result in the allowed 47 number of units. If we go 13 doubles

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Whitcomb – No. 46 is the number.

Hopkins – If we do 22 single family....

Whitcomb – That’s the problem. You’re a moving target. If you want a variance you have to be specific.

Hopkins – We are being specific.

Whitcomb – You were up until two minutes ago.

Hopkins – We all agree on the applicability of the chart, the original chart from way back when in 2007. We’ve asked for a variance is for that number to be adjusted instead of 560,000 sq. ft. we’re asking for that number to go up to 608,000 sq. ft. So we have to live within that combination.

Whitcomb – I calculate 591,000 sq. ft.

Hopkins – That’s with 22 singles. But the actual maximum number could be under any combination under our plan could be 608,000 sq. ft.

Chinnici – No. I’m willing to go down to that number he said. We want the maximum number of singles at 22, but if we only built 21 singles and 13 doubles that would be 47 units. All we’re asking for is a maximum 22 single permits.

Whitcomb – Then you’re outside the buildable area.

Chinnici – No, because a single house requires 16,000 sq. ft. and a double requires 20,000 sq. ft. so if you take two singles and put them together you. There is an outcome that’s possible, without violating the request before you, that would result in 47 units.

Hopkins – We had a unit that was outside what was known as the buildable area. How we can address this is to put a condition that, going forward, all units have to be in the original buildable area.

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Salter – Essentially what you are saying is that because of the area required per single or the area required per double is different. If you had all singles you would need a heck of a lot more space. But if you had all doubles, you could put more in the space that was originally allocated...is that right?

Chinnici – If we built all doubles, we'd be like 56 units.

Salter – Now you want to put more singles, but still be able to stay within the original area, correct?

Hopkins – Yes. The buildable area is not changing.

Friess – But I'm still hearing "up to 47 units".

Hopkins – It's the difference of how you determine density based on the chart and what's actually on the ground. They're not the same thing. Under the chart we need a variance, but what is on site will be no different in terms of the buildable area.

Aubrecht – By coming back to that we add to the confusion. My understanding is that you are submitting this plan to build this plan, this number of single units, this number of double units....

Hopkins – Up to 22.

Aubrecht – If you're saying there's a mix, that's a different animal.

Chinnici – Let me see if I have this correct. You want a fixed number, a fixed combination?

Aubrecht – Yes, you got it.

Chinnici – Fine. 22 singles and 12 doubles.

Salter – People were upset because this was a moving plan. Now it isn't.

Aubrecht – Here's where we are. This is a Board of five members. Only four are present tonight. If we do a vote tonight, and I can't tell you where people are, if it comes up a tie vote, it's a no. Also, you can't come back with this request for a year's time.

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Bennett - A 2 yes -2 no vote defeats the motion. You need an affirmative vote or the motion fails.

Chinnici – We are asking for 22 single permits and 12 double permits.

Hopkins – Can we have a moment to discuss this, whether or not we want a vote to be taken tonight?

Aubrecht – Yes.

Hopkins – If the Board is will to consider...could we at least agree on what conditions you would like to see attached to any resolution?

Whitcomb – Sure, we can talk about it.

Aubrecht – I have three (3) conditions I would like to see:

1) The number of units will be a defined number of units – 22 singles and 12 doubles as shown on Exhibit 22, as submitted on July 17, 2014 and building will take place in the agreed to constructible area as previously defined by the Town Board.

Chinnici – Can we, say, take these two singles and put them where a double is shown and put that double where the two singles came from? Because you're saying as shown on the exhibit.

Aubrecht – As long as you don't go outside the buildable area.

Whitcomb – And as long as the number of single and double units does not change.

Aubrecht – Continuing with the conditions:

2) There is no loss of open space or increase in the amount of roadway network.

3) There will be no additional units constructed to the south along Farrier Lane (going toward Route 20A)

Salter – So you plan on leaving those three units on their own roadway?

Hopkins – Yes.

Kramer – There will be a sidewalk that connects it to the rest of the development.

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Hopkins – In light of those conditions, I think we'd be comfortable with the Board proceeding with the vote.

Chinnici – What assurance would I have that there will be five Board members in August?

Whitcomb – You never know.

Salter – Do you foresee any reason to change anything that you've agreed to tonight?

Chinnici – No.

Aubrecht – This hearing is closed.

MINUTES OF A MEETING AS HELD BY THE
ZONING BOARD OF APPEALS OF THE
TOWN OF AURORA
July 17, 2014

The meeting was called to order by Acting Chairman Donald Aubrecht, with the following Board members present:

James Whitcomb
Albert Salter
Donald Aubrecht
Rod Simeone, Alternate

Others Present: William Kramer, Code Enforcement Officer
Absent: Wayne Nowocin, Davis Heussler

CASE #1207 – Frank Chinnici aaf Legacy Polo Grounds, (Farrier Lane, Registry Lane, Martingale Court, East Aurora, NY

After due deliberation by the members of the Zoning Board of Appeals of the Town of Aurora, County of Erie and State of New York, the following motion was made by James Whitcomb and seconded by Albert Salter to grant an increase in the number of single units in the Legacy Polo Ground Development (Farrier Lane, Martingale Court, Registry Lane) by two (2) - from twenty (20) to twenty-two (22) - with the following conditions:

- 1) Only twenty-two (22) single units will be constructed.
- 2) Only twelve (12) double units will be constructed.
- 3) The buildable area will be that as shown on Exhibit 22.
- 4) There will be no loss of open space.
- 5) No units will be built further south of unit No. 1 on Farrier Lane.
- 6) There will be no increase in roadway space.
- 7) The buildable area (agreed to constructible area) is the same as the envelope area shown on the map cover approved by the Town Board and filed in 2007.

This variance is granted in accordance with exhibits and testimony presented. For purposes of SEQR, this is a Type II action.

Upon a roll call vote being taken:

Salter – aye; Whitcomb – aye; Simeone – nay; Aubrecht – aye

Ayes – three Noes – one Carried.