

Town of Clarence
One Town Place, Clarence NY
Zoning Board of Appeals Minutes
Tuesday September 10, 2013
7:00 p.m.

Vice-Chairman Ryan Mills called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Vice-Chairman Ryan Mills	David D'Amato
Patricia Burkard	Jonathan Hickey
Gregory Thrun	

Zoning Board of Appeals members absent: Chairman Dan Michnik

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo

Other interested parties present:

Scott and Virginia Zgoda	Kevin Dossett
David Fox	

Vice-Chairman Ryan Mills is acting Chairman as Chairman Dan Michnik is absent.

Old Business

Appeal No. 6 (from July 2013 meeting)

Scott and Virginia Zgoda
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 168 square foot variance to allow for a 1,128 square foot attached garage in the side yard of an existing home.
- 2.) A 7.5' variance to allow for a 5' side yard setback to a primary residence for the construction of a new attached garage.

Both requests apply to the construction of a new attached garage at 6411 Bridlewood Drive South.

Appeal No. 6 is in variance to §229-55(D) and §229-52.

DISCUSSION:

Scott and Virginia Zgoda are present. Mr. Zgoda said nothing has changed since the last meeting except that the property has been staked since then.

Vice-Chairman Mills referred to a site plan aerial photo of the proposed west elevation entitled A-1 July 9, 2013.

Two (2) neighbor notification forms are on file. Both forms denote that the second story plans have been showed to the neighbors.

Mr. D'Amato asked why the applicant needs this variance. Mr. Zgoda said he has lived there for 10 years and his family is growing, he has 4 children now and potentially more. He is trying to maximize his living space. The garage is full of stored items and the storage space in the basement is maxed out. There is a single door on the proposed structure. The walkway to the structure would shift over to where the garden is now.

Mr. Hickey asked if the applicant looked at other options that would bring the variance request closer to code. Mr. Zgoda said he looked at putting a shed in the back for storage but the lake is there. He has been considering an additional bedroom for three years because of his growing family. This proposal seems to be the most logical. He plans to live here for a long time but needs to maximize his living space in order to stay. The neighbor at 6401 Bridlewood Dr. South has lived there since before the Zgoda's moved in. Mr. Hickey asked if the applicant can do anything to bring the side yard setback request closer to code or is the request the best they could do in light of the spacing of the properties. The applicant said if the setback was brought closer to code it would cause the addition to come closer to the house and, ideally, the garage should have a 16' wide door, however the proposed door is only 12'. Mr. Zgoda wanted a two-car garage but that would put the structure right at the property line.

Mr. Thrun said the breezeway will not be incorporated into the living space. He asked if the chimney will be incorporated for the fireplace. Mr. Zgoda said the chimney is capped and no longer functions. Mr. Thrun asked if the size of the breezeway where the columns are could be decreased. This will help with the side yard setback request. The applicant said the breezeway could be decreased by 2'. The square footage variance request would also be reduced as a result of decreasing the breezeway. The window on the proposed structure can be centered even with the decrease in building size.

Vice-Chairman Mills noted that the size of the bedroom will be 16' x 24', the applicant confirmed this measurement. There will only be a hallway, a bedroom and a closet; no bathroom. The façade will be brick which is consistent with the house.

Mr. D'Amato asked if there are windows on the back side of the garage. Mr. Zgoda said yes, the back of the garage will be white siding to match the house; there will be an overhead door or French doors installed to get the lawnmower in and out of the structure easily. There will also be a transom light.

Mr. Hickey asked if the applicant would be comfortable with an amendment to the request reflecting a 7' side yard setback. Mr. and Mrs. Zgoda said they think that is a reasonable request.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 6 under Old Business, as written with respect to the first request. The second request is approved with the amendment as follows: a 5.5' variance to allow a 7' side yard setback. This may impact the square footage of the proposed structure.

ON THE QUESTION:

Mr. Hickey said there are special circumstances that the Zgoda's have presented that warrant the appeal being granted, specifically the size of their family and their day to day needs now and moving into the future.

Gregory Thrun	Aye	Patricia Burkard	Aye
Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

New Business**Appeal No. 1**

David Fox
Residential Single Family

Requests the Board of Appeals approve and grant a 991 square foot variance to allow for a detached accessory structure totaling 1,712 square feet. Previously existing 759 square foot snow-collapsed accessory structure to be replaced with 659 square foot accessory structure, abutting an additional existing 1,053 square foot detached accessory structure at 4955 Shimerville Rd.

Appeal No. 1 is in variance to §229-55.

DISCUSSION:

David Fox is present and explained that when he bought the building the garage was in the shape of a "T". The backside of the "T" collapsed from snow. He settled with the insurance company. In order to put in the new building the foundation needed to be a full foundation due to the size of the front side of the building, which was more money than the settlement. It took Mr. Fox a few years to save the money for the new foundation. Once he had enough money he went to the Engineering Department and they told him to talk to the Zoning Board. He basically just wants to replace what collapsed.

There are two (2) neighbor notification forms on file.

In response to Mr. Hickey's questions Mr. Fox explained that he has lived in the house since 2003 with his wife and his children, the back area collapsed two (2) years ago, and the purpose of the structure was storage of a vehicle he wanted to refurbish. It is confirmed that the prior space was larger than what Mr. Fox is asking for this evening. Mr. Hickey said the correct request is for a 992 square foot variance. Mr. Fox said the new structure would be used for a workshop, he does some carpentry. His profession is a computer programmer so the workshop would be used for his hobby of carpentry not for commercial use. The building will have power. When the building collapsed he got rid of the vehicle he was working on. Mr. Fox would like to have the structure done before the snow flies. Mr. Hickey asked what the plan is for the property to make it more aesthetically pleasing than it is now. Mr. Fox said the bushes will be removed so the concrete guy can have access to the site, a lot of fill will have to be removed, that fill will be spread out in the area to build it up around the building. There will be landscaping on top of the grass. There will be bushes put in, but nothing too tall because that is the windward side. The new building will

be metal. Mr. Hickey asked if Mr. Fox can go any smaller than what he is proposing. Mr. Fox said it was a surprise to him that he had to come before the Zoning Board. He already bought the metal building and that is the size of it. It is a pre-fabricated structure and is stored in his garage now. It cost \$6,000.

Mrs. Burkard noted that the current garage is two-story and asked what it is used for. Mr. Fox said it is used for storage. It is a three-car garage which houses his car, his wife's car, a snow blower and other property maintenance equipment. Mrs. Burkard asked if a vehicle is driving down The Fairways will they be able to see the proposed building. Mr. Fox said there is 50' between houses where the structure will be visible. His house is 2200 square feet; it is only a two-bedroom house. Mr. Fox does not have a photo of the structure that he purchased. The access to the new building will be through the existing garage. Mrs. Burkard asked if the neighbors at 4975 Shimerville Road will see the structure from their backyard. Mr. Fox said no.

Mr. D'Amato asked for details on the metal structure. Mr. Fox said it is gray and 11.5' high. It will be attached to the existing structure. Mr. D'Amato asked if the applicant looked into a wooden structure, Mr. Fox said yes, it would cost about \$30,000 which is much more than the metal structure.

Mr. Thrun asked if there will be a back door to the metal building. Mr. Fox said there was not one planned but it is an option. The garage that collapsed did not match the existing garage; it had a lot of roof and a low wall.

Vice-Chairman Mills voiced his concern about how the proposed structure blends in with the existing structure and the neighborhood. He asked if Mr. Fox has seen a similar structure in the neighborhood; it seems that everything in that community is of wood construction. Mr. Fox said there are some pretty odd buildings back there but nothing like what he is proposing. There is one building in the neighborhood where the roof is an inverted "V"; the outside edges are higher than the inside, it is a wood construction. Vice-Chairman Mills said he would ask the applicant to decrease the size of the structure but since he already purchased it, that is not possible, unless the structure is pushed into the existing garage or is cut down in size. Although it is smaller than the building that was there, it is still a substantial variance. Vice-Chairman Mills asked how the applicant could mitigate the aesthetic impact this structure would have on the neighborhood. Mr. Fox said landscaping would be easy to install. The current assessment is with the structure intact. The insurance company and the mortgage company are both expecting it to be rebuilt.

Mr. D'Amato asked when the existing garage would be fixed up. Mr. Fox said when he gets permits. Mr. D'Amato asked why the applicant hasn't been working on the existing garage. Mr. Fox said he has been working on it; he redid the roof last year. He has been working on the soffits as well, the back ones are done. Mr. D'Amato said that will not match the proposed aluminum structure and voiced his concern with the aesthetics not fitting in with the character of the neighborhood. Mr. Fox said the aluminum is paintable. Anyone on the golf course can't see the structure. Mr. D'Amato asked if a smaller wood structure would work. Mr. Fox said he is looking at replacing what collapsed with the same size structure.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **deny** Appeal No. 1. In accordance with Town Law §267, the Zoning Board of Appeals members look at a variety of factors in evaluating a variance. The first is whether an undesirable change would be produced in the character of the neighborhood. Vice-

Chairman Mills said based on the style of the structure, the size of the structure would create an undesirable change in the character of the neighborhood. The second factor is whether the benefit sought by the applicant can be achieved by some method which will be feasible to the applicant to pursue but that would not require a variance. The applicant could construct a structure that would be more fitting with the character of the neighborhood. The third factor is whether the requested area variance is substantial; a 991 square foot variance based upon this area is substantial. The fourth factor is whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood. Based upon the nature of Shimerville Road, The Fairways and Gaskin Road this proposal would have an adverse affect on the physical environmental conditions in that area. The final factor is whether the alleged difficulty is self-created. It is self-created because the applicant has a variety of other options to pursue. There are different style constructions as well as a lesser variance possibility.

Gregory Thrun	Nay	Patricia Burkard	Aye
Jonathan Hickey	Nay	David D'Amato	Nay
Ryan Mills	Aye		

MOTION FAILED.

ACTION:

Motion by Jonathan Hickey, seconded by Gregory Thrun, to **approve** Appeal No. 1, changing the request from 991' to 992'. There are unique circumstances which include a natural disaster or weather related issues that have forced the applicant's hand in a number of ways that he is facing a circumstance that is not of his own making. The benefit sought outweighs the health, safety and welfare of his neighbors, who are not impacted. There is not an option more feasible, a wooden structure was discussed but would be 500% more expensive than the structure that Mr. Fox purchased.

Gregory Thrun	Aye	Patricia Burkard	Nay
Jonathan Hickey	Aye	David D'Amato	Nay
Ryan Mills	Nay		

MOTION FAILED.

Landscaping around the proposed structure was discussed. Mr. Callahan said houses are built all the time in Clarence and there is never Landscape approval on a residential property. Deputy Town Attorney Steve Bengart suggested not using the term "moderate" or "screening" when referring to landscaping. He asked for specifics otherwise the Building department will be put in a terrible position. Mr. Hickey said he is not comfortable making a motion specifying heights and types of trees. Mr. Callahan pointed out that if Mr. Fox had replaced the structure immediately he would not be here. He purchased the property with the intent to replace it immediately but because of reasons explained he was not able to replace it until now. When the applicant went for his building permit it was identified, and rightfully so, that it was two years since the building collapsed, therefore the process starts over which shows the violation of the law.

ACTION:

Motion by Gregory Thrun, seconded by Jonathan Hickey, to **approve** Appeal No. 1 with the total of 992 square foot building as proposed with appropriate landscaping and shrubbery that will be at least 2' but no more than 8' tall to screen from The Fairways roadside, which is the entire south side of the building.

Gregory Thrun	Aye	Patricia Burkard	Nay
Jonathan Hickey	Aye	David D'Amato	Nay
Ryan Mills	Nay		

MOTION FAILED.

Mr. D'Amato said his concern is that the proposed structure is an aluminum building and does not fit in with the character of the neighborhood.

Mr. Thrun said the applicant noted that the structure is paintable.

Mr. Hickey asked the applicant if he could come back with some proposals about how he would paint or otherwise make the structure fit into the character of the community. Deputy Town Attorney Steve Bengart made sure the applicant is aware that there are no guarantees that he will be approved if he comes back before the Board. He also suggested that he bring the neighbor to the north to the meeting if he is in favor of this.

Vice-Chairman Mills said if the applicant would like to be tabled, he can come back to the Board with some serious mitigation, understanding the character of the structure. Possibly the applicant's testimony that it would be painted and possibly the applicant's own landscape plan indicating the actual shrubs that will be installed and their location. He needs to show what he would definitely do to mitigate the aesthetic nature of the building. Mr. Fox noted that it will be October, he does not know if concrete can be poured then, so this may push it off until the Spring.

Mr. Thrun said it would also be helpful if Mr. Fox could show what he is doing with the main garage structure and how it will be incorporated with the new building to be sure it matches or blends properly.

Mr. Fox understands the discussion; he said tabling is unfortunate because that means it won't happen this year. He cannot think of another option. He might have to sell what he has and just landscape back there, he would talk to the assessor to have the property re-assessed. He is in favor of tabling the variance request.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **table** Appeal No. 1 to allow the applicant the opportunity to submit mitigation plans as discussed.

Gregory Thrun	Aye	Patricia Burkard	Aye
Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Deputy Town Attorney Steve Bengart said the applicant does not have to come back within 30 days to submit new plans to the Board. He can take as much time as he needs. Mr. Fox understands this.

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on August 13, 2013, as written.

Gregory Thrun	Aye	Patricia Burkard	Aye
Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Meeting adjourned 7:57 p.m.

Carolyn Delgato
Senior Clerk Typist