

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday August 14, 2012
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning	Vice-Chairman Daniel Michnik
Ryan Mills	David D'Amato
Patricia Burkard	Jonathan Hickey

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo

Other interested parties present:

Lisa M. Leising	Craig Small
Todd Leising	Karen H. Small
Martin & Juliet Hurley	Cesare Banach
John & Jennifer Passero	Paul Fadale
Tom Krug	Christopher Graham
Ron Goodband	David Sutton
Carl Skompski	Anne Sweeney
Cheryl Meyer	Gary Stonish

Old Business

Appeal No. 2

Todd and Lisa Leising
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 90' variance to allow for a 200' yard setback for the construction of a new residence at 9025 Sesh Rd.

Appeal No. 2 is in variance to § 229-31(A)(4).

DISCUSSION:

Todd and Lisa Leising are present. Chairman Henning explained that this request was previously tabled for various reasons. The Leising's are back before the Board with additional information.

Mrs. Leising said they purchased the lot for privacy, it is a big lot and it is important to her that the home be setback. If they build too close to the road there are trees that would have to come down. She did not think there would be resistance to their request because there are many homes in the neighborhood that are setback 200' or more. There seems to be no rhyme or reason to who gets approved and who does not. Her concern is that the variances are being granted arbitrarily. She does not think 200' is unreasonable.

The neighbors on either side of the property are aware of their intentions and do not have any objections. The only concern is with the neighbor, the Passero's, who bought the lot next to them. The Passero's are limited as to how far they can build back because they have a pond on their property; they do not want the Leising's in their backyard. In speaking with the Passero's, who plan to build at 150', the Leising's would agree to a 175' setback. Mrs. Leising said if the 175' variance was granted, the Passero's would not have to obtain a variance to set their house back 150'. She thinks this will provide more privacy instead of building side by side where the backyards would butt up to each other. Mr. Leising said they talked to Joe and Claire Ray, owners of lot #1, who said they were approved for a 500' setback. Mrs. Leising went through old business and found properties along Sesh Road that were approved for a 702', a 350' and a 300' variance.

Mr. Michnik said the variances that were granted were based on individual circumstances which include issues such as the size of the property, location of the property in reference to the street, is property in floodzone, or is the property on a curve.

Mrs. Leising said she understood that the concern was that the three houses on each side of her lot are at 100' and the Board wants to keep the homes in line. The houses with all these variances are not in line. Mr. Michnik pointed out that most of the homes that received variances are on the north side of the road.

Mr. Michnik said this is a substantial request. Mrs. Leising said she does not understand why it is substantial. Mr. Michnik explained that this request would set a new pattern for the next three houses that would be built in that order. It is not fair for the applicant to ask for a 200' variance and not care about the setbacks of future houses down the road. Mr. Michnik said every situation is special and asked what makes this one so special that the applicant is asking the Board to change the requirement just for them. Mrs. Leising said they are not asking for special treatment. Mr. Michnik disagreed and noted that they are asking for 90' to be pushed back, that is special. Mrs. Leising said it is not unreasonable, Mr. Michnik disagreed with that, too and went on to say that there is no favoritism when it comes to who comes in asking for a variance, the Board does what is in the best interest of the Town. The applicant knew that the setback was 110' when they purchased the property.

Mr. Mills asked the applicant to articulate the reasons for the request. The application indicates that they want to be setback closer to the trees and wildlife, and for the safety of small children. Mrs. Leising said the houses that are 110' back are too close to the road. If she sets her house at 100' or 110' any existing mature trees will have to be taken down. They want to save the mature trees. Mr. Mills said the Board is asked to look at the five (5) criteria listed in § 267 of the Town Code when reviewing a variance request. The Board looks at the street as a whole, the character of the community, whether it would have an adverse impact on the character of the community.

Mrs. Burkard said if this request is granted and the neighbor builds back at the distance they desire, then there will be a mish-mosh of setbacks in the area, this is what the code is trying to avoid. Mr. & Mrs. Leising said that is how it is in that area and that is why they want to build there because of the variation in setbacks. Mrs. Burkard said the setback doesn't vary much in that immediate area. Mr. Leising notes other setbacks that were approved on Sesh Road.

The Leising's own the property but will not build for a few years.

John and Jennifer Passero, owners of lot 3 at 9015 Sesh Road, are present. They own the property next to the Leising's. Mr. Passero's concern is he doesn't want neighbors in his backyard. His setback would be

maximum 150'; he does not want to be too close to the pond. He objects to the 200' request as well as the 175' setback the applicant has offered at this meeting.

Mr. Mills asked if the neighbor had an objection to any variance or is there a certain footage that they would be ok with. Mrs. Passero thinks a 150' setback would be acceptable for her home; they plan on building within the next 18 months.

Mr. Callahan explained that the law states a 45'-200' setback is allowed, what establishes the setback line is what adjoins the property within 500'. An average setback can be established by looking at other surrounding setbacks in the area. If the 600' setback that was granted to a surrounding property was factored into the average, a variance would probably not be needed.

ACTION:

Motion by Arthur Henning, seconded by Patricia Burkard, to **approve** Appeal No. 2, under Old Business changing the request to allow a 175' front yard setback.

Patricia Burkard	Nay	David D'Amato	Nay
Ryan Mills	Nay	Daniel Michnik	Nay
Arthur Henning	Aye		

MOTION FAILED.

ACTION:

Motion by Patricia Burkard, seconded by Arthur Henning, to **approve** Appeal No. 2, under Old Business changing the request to a 40' variance to allow a 150' front yard setback for the construction of a new home at 9025 Sesh Road.

ON THE QUESTION:

Mrs. Burkard would like to see both homes built at 150' setback. Mr. Leising said the neighbors are happy with this setback but he and his wife are not. Mr. and Mrs. Leising compromised at 175', the neighbors made no compromise. Mrs. Leising said they bought the land first. If they have to go to 150' they may consider selling the lot.

Patricia Burkard	Aye	David D'Amato	Nay
Ryan Mills	Aye	Daniel Michnik	Nay
Arthur Henning	Aye		

MOTION CARRIED.

New Business**Appeal No. 1**

Juliet M. Hurley
Planned Unit Residential Development (PURD)

Requests the Board of Appeals approve and grant a 2.5' variance to allow for a 10' side yard setback for the construction of an attached garage addition at 5402 Center Pine Lane.

Appeal No. 1 is in variance to § 229-52(B).

DISCUSSION:

Juliet M. Hurley and Martin Hurley are present. Mrs. Hurley said they want to add a single car garage and a mudroom. They have five (5) children and their oldest son has a car. They currently have a two car garage and need room for another vehicle. This will help provide more privacy for their backyard and their pond. This will also provide a side door to the home, which is important to Mrs. Hurley so she can see people coming and going to and from her property.

Neighbor notification forms are on file.

The construction materials of the addition will match the house. The potential contractor was present and explained that the roof line will blend in with the existing roof line off-set; it will be lower but with the same pitch and the same shingles.

The applicant will lose two (2) of the three (3) trees that are in the area of the proposed addition. They will try to re-locate the trees, but, because of the maturity of them, they may not take.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

Darla Goodband
Residential Single Family

Requests the Board of Appeals approve and grant an 11' variance to allow for a 35' front yard setback for the construction of an attached garage addition on a corner lot at 5135 Fox Trace.

Appeal No. 2 is in variance to §229-52(A)(1).

DISCUSSION:

Ronald Goodband is present. He explained that he wants another garage for more storage.

Mr. Michnik asked if the applicant explored other locations for this addition. Mr. Goodband said if they put the addition on the back there is a big tree that would have to be removed and they want to keep the tree. Mr. Michnik is concerned with the addition being on the front of the house. He thinks off to the side by the family room is a better option. Mr. Goodband considered that location but does not think it is possible to put it there.

Mr. Goodband explained that he would like to store his lawnmower, snow mobile and trailer in the addition. The option to have a shed in the back on the property is not attractive to him, he would rather have it all as one structure. There are no plans drawn up yet for this project.

Mr. Mills asked the applicant if he considered putting the addition on the side of the house closer to Galbraith Road. Mr. Goodband said if he located the addition as suggested he would lose the capability of pulling in another car. Mr. Mills shares Mr. Michnik's concern with the addition being put on the front of the house. Mr. Goodband said there is a similar build around the corner from this property and it looks very nice. The roof line will have a peak in the front, similar to the front peak of the house.

If the request was denied Mr. Goodband does not know what he will do. He does not own the property yet, it is going through a short sale with the bank and he is hoping to close this Friday.

Mr. D'Amato said he would be more comfortable making a decision if the Goodband's were the owners of the property. He has the same concerns as those of Mr. Mills and thinks, aesthetically, it would fit in better if the addition was on the side of the house.

Deputy Town Attorney Steve Bengart suggested the applicant table this request and come back to the Board when he is the owner or has written authorization from the bank to request the variance. Mr. Goodband does not have a problem with this.

Carl Skompinski, resident of Hunters Cove, is happy someone is buying the property. He is concerned with the location of the proposed addition. There is no stop sign at that turn and cars come around that corner quickly, if there is an additional push-out there will be less clearance to see anything coming around the turn. There are no sidewalks and there are many people who walk, jog or push strollers down the street. He has a safety concern.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **table** Appeal No. 2, to allow the applicant to either close on the purchase of the home or obtain written authorization from the bank allowing the applicant to apply for a variance.

ON THE QUESTION:

Mr. Michnik suggested the applicant look at other options for the location of the addition.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 3

Cheryl Meyer
Industrial Business Park

Requests the Board of Appeals approve and grant a Use Variance to allow for the construction of single family dwellings on existing vacant property south of 4210 Shisler Road, SBL #83.00-3-28.

Appeal No. 3 is in variance to §229-100(A).

DISCUSSION:

Cheryl Meyer is present. She has owned the property since 1946 and her intent has always been to develop the land according to the residential law. She lived in the house on Shisler Road for 18 years and her goal was to finish off and maintain the integrity of that neighborhood by selling this and one other lot.

Mr. Mills asked what the applicant would do if the variance was not granted. Ms. Meyer does not have another plan. It is her preference to sell the two lots on Shisler Road as residential because it would not be fair to the residents who currently live there to put something industrial there. She has one buyer for both lots; the lots total about 2.4 acres.

Mr. D'Amato asked if the applicant has a buyer for the property. Ms. Meyer said yes and explained that the sale will depend on the result of this variance request. The buyers intend to build one (1) home.

The size of each lot is a little over an acre. She is aware of the wetlands situation, she had an environmental impact study done by Earth Dimensions and they found nothing there. Earth Dimensions will follow up with the Army Corp of Engineers.

Jeff Luchterhand, of 4220 Shisler Road, asked for clarification on the request. He referred to the aerial view of the land and asked if the request is for rezoning all of the land from the house to Tillman Road or just the two (2) lots. Mr. Mills said he is concerned with the space between the two existing homes and the two (2) yellow rectangles depicted on the aerial view. Ms. Meyer said she is selling the two (2) yellow rectangles. Jim Callahan clarified that the request is for a use variance not a rezoning of the property.

Mr. Mills referred to the Preliminary Wetlands Map dated July 24, 2012 that is in the file and asked Ms. Meyer if the area marked 4210 is being sold. She said yes, she is selling the entire property within the red square on the Wetlands Map.

Mr. Michnik asked the applicant if the buyer is purchasing all the acreage to build one home. Ms. Meyer said the buyers wanted a lot of acreage in order to have a nice view and to have land. They will build a 2500-2800 square foot home.

Mr. Luchterhand's lot is approximately 300' deep. He asked what could happen to the desolate area behind the property in question. Mr. Michnik said that is not in the discussion at this point.

Mr. Mills asked the applicant if it would be problematic for the sale of the property if the Board put a restriction on the variance stating it can only be a one single family home. Ms. Meyer said she does not think it will be a problem as the potential buyer has not told her otherwise, but she cannot speak for them.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 3, with the condition that there be only one (1) single family residential home built on the parcel.

ON THE QUESTION:

Mr. Michnik clarified that the parcel cannot be split in the future. Mr. Mills and Mr. D'Amato agreed.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 4

Christopher Graham
Residential Single Family

Requests the Board of Appeals approve and grant a 5' variance to allow for a 40' rear yard setback for the construction of an addition to an existing residence at 4087 Susan Drive.

Appeal No. 4 is in variance to §229-52(C).

DISCUSSION:

Christopher Graham and his son Benjamin are present. Mr. Graham said he wants to expand the living room. When they built the house they should have built it bigger. He bought the house in 2000, but it burned down. They rebuilt in 2001 and have lived there ever since. The 16' x 16' addition would be a family room. All materials will match the existing house.

Neighbor notification forms are on file.

ACTION:

Motion by David D'Amato, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 5

Craig and Karen Small
Planned Unit Residential Development (PURD)

Requests the Board of Appeals approve and grant a 4' variance to allow for an 8.5' side yard setback for the construction of an attached garage addition to an existing residence at 8197 Oak Leaf Lane.

Appeal No. 5 is in variance to § 229-52(B).

DISCUSSION:

Craig and Karen Small are present along with their contractor. Mr. Small wants to expand the current two car garage to a three car garage and add a mud room. He thinks this will be an improvement to the property. There is an existing shed located 3' from the property line, it will be removed.

Dave Sutton, of Sutton Architecture, distributes an updated site plan. It is important to see the significance in the landscaping as it will be enhanced as a result of the addition. The 8.5' setback will be completely landscaped. The addition will be all brick and compatible with the roof line; it will be in keeping with the primary house. He distributed copies of an explanation on the five (5) criteria the Board looks at when reviewing a request. A copy of this document is on file. Mr. Sutton said there are several houses in the neighborhood that have three-car garages; this request will not create a negative impact on the neighborhood. There is a substantial hedgerow that borders the property that is directly impacted by this request. The narrowest measurement for this addition is 12' wide. It is not a substantial request because it is replacing a shed that is actually more imposing than this addition would be. Mr. Sutton said the project is being done to enhance or better the property.

Neighbor notification forms are on file.

The applicant received a variance for the shed that is currently on the property. He spoke with the neighbor about a week and a half ago. He provided a blueprint of the plans when he dropped off the neighbor notification form. Mr. Small spoke with Dr. Mitchell on the date of this meeting and Dr. Mitchell said he is not opposed to the project and sees no need to attend the meeting. Dr. Mitchell's property is on the side of the home where the addition will be built. The existing shed will be taken down and sold. It must be removed immediately in order for the project to begin. Mr. Small said it would be acceptable to him if a condition of removing the shed within 6 months was placed on the approval. Mr. Small plans on putting in some new landscaping along the outside of the new garage, the landscaping will match the existing home's landscaping. Mr. Mills said it doesn't look like this could be accomplished any other way based on the layout of the house.

Mr. Sutton said the driveway will remain at its existing width and will only flare out in order to get a car into the addition; this is represented in the site plan dated 8-14-12 titled SK-1.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 5, as written with the condition that the existing shed be removed from the premises within six (6) months of the building permit being issued.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 6

Cesare Banach
Residential Single Family
(Property has previously received a Commercial
Use Variance)

Requests the Board of Appeals approve and grant:

- 1.) a 65.5 square foot variance to allow a plaza sign 97.5 square feet in size.
- 2.) a 26 square foot variance to allow an LED display sign board 36 square feet in size.

Both variances apply to the request to allow for the construction of a new combination tenant panel and LED display board plaza sign at 8500 Roll Road.

Appeal No. 6 is in variance to § 181-3(B)(1) and § 181-3(B)(4).

DISCUSSION:

Paul Fadale of NAS Sign Company is representing the applicant. Cesare Banach is present. Mr. Fadale said Mr. Banach has spent over three (3) million dollars on this property; he has 15 tenant spaces in the building. The current square footage of the building (approximately 40,000) only allows 1.6 square feet of signage per tenant. Half of the tenants are in the back of the building with no visibility from the road. The applicant is asking to increase the square footage for each tenant up to 6.5 square feet which totals the 97.5 square footage they are asking for. There were no oppositions from the surrounding residents. The LED messaging would be stable, no movement, dimming down to 30% at dusk. The sign would be shut off at an appropriate time, perhaps 10pm to 7am. They are looking to display tenant logos and tenant messaging. Mr. Banach said he wants to match the stone on the sign to the building; he wants to do a composite of cedar. He will have the architect draw a complete rendition of the sign, the building behind it and the street view.

Mr. Michnik suggested tabling the request so the applicant can submit plans showing exactly what he is asking for.

Mr. D'Amato asked if the applicant depicted the location of the sign accurately. Mr. Banach said there is an underground oil line in the area of the proposed location of the sign and no digging can be done near it; he had to take that into consideration when deciding on the location of the sign.

Mr. Fadale said the reason he made the sign so wide is because of the height restriction on a monument sign. Mr. Michnik voiced his concern with the width of the proposed sign. The revised plan must show the exact dimensions of the sign including the side view.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills, to **table** Appeal No. 6 to allow the applicant to submit a plan with the exact sign dimensions he is requesting.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 7

Thomas and Kim Krug
Residential Single Family

Requests the Board of Appeals approve and grant a 60’ variance to allow for a 135’ front yard setback for the construction of a new primary residence at 5370 Old Goodrich Road.

Appeal No. 7 is in variance to § 229-52(A)(3).

DISCUSSION:

Mr. Krug is present and noted that the application stated a 150’ front yard setback is being requested, not 135’. The property is staked at 150’. Mr. Krug explained that his lot is 456’ deep and with the increased traffic on Old Goodrich Road, he wants to be a further back from the road and wants to plant trees up front on the property. It is clarified that the requested 60’ variance is correct; the 135’ is a typo and should read 150’.

Neighbor notification forms are on file. Neither neighbor has a problem with the variance.

The square footage of the proposed single-family ranch-style home is 3,084 feet. Mr. Mills asked if the applicant can achieve the same desired result by decreasing the request in any amount. Mr. Krug said he has pared it down as far as he can. He is undecided as to who will do the construction. The house will be stone on the lower part and all the way around the house will be fiber cement, a cedar exterior but not real cedar. He would like to start building next Spring. He took possession of the property this year.

In response to Mrs. Burkard’s question regarding the setback, Mr. Krug confirmed that his house would be lined up with the house to the north.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 7 as a 60’ variance to allow a 150’ front yard setback for the construction of a new home.

Patricia Burkard	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 8

Anne Sweeney
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

- 1.) (2 counts) a 41 foot variance to allow a building lot having 109 feet of public road frontage.
- 2.) (2 counts) a .53 acre variance to allow a building lot having .805 acre.

All counts apply to the request to allow for the creation of one additional building lot at 10595 Bergtold Road (SBL# 72.18-2-16.2).

Appeal No. 8 is in variance to § 229-39(B) and § 229-40(A).

DISCUSSION:

Anne Sweeney is present and explained that in the late 1990's when her mother set this property aside, the zoning was such that it was big enough for two lots. Her mother passed away last year and Ms. Sweeney is in the position to sell the property. The rest of the lots down Bergtold Road have similar sizes as what is being requested.

Mrs. Burkard asked if Ms. Sweeney owns the property. Ms. Sweeney explained that she and her brother inherited their mother's estate when she passed away. The lots are 356' deep.

Ms. Sweeney does not have potential buyers for the property, she is doing this in anticipation of someone purchasing the lots. She and her brother have contemplated selling the property as one parcel, but they will get less money that way. It has not been on the market. The applicant wants to try to obtain this variance so she knows exactly what she can put on the market.

Mr. Michnik is concerned with the 41' variance request; he said it is a substantial request. He suggested the applicant explore selling the parcel as one unit. Ms. Sweeney said it has been appraised. She felt comfortable asking for this variance because the rest of the lots down Bergtold Road are 100' wide.

Mr. Callahan explained that before the law was changed the property was zoned Agricultural requiring 100' of frontage and a ¾ acre minimum lot size. In 2005 the Town of Clarence changed the law in Agricultural zoning to require 150' of frontage and 1.33 minimum acreage. The Health Department would have to approve the lots for septic systems. It is clarified that the appraisal shows one single parcel. Ms. Sweeney said the appraisal came in at \$42,000; she spoke with a realtor who said if the lots were split they could sell for \$30,000-\$50,000 each.

Gary Stonish, of 4380 Ransom Road, owns the property to the east, adjacent to Ms. Sweeney's lot. He is concerned with the side yard setback. If the request was granted he would ask that the Board require a 35' side yard setback on the east edge of the lot and leave 10' of the existing natural screening foliage and large trees on the east edge of the lot. This will preserve some of the original intent of the Zoning Board and preserve a portion of the natural beauty and green space that currently exists.

Mrs. Burkard said the size of the parcel, if kept as one, may make it more saleable in that area because there aren't large lots in that area.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **deny** Appeal No. 8, as written.

ON THE QUESTION:

Mr. Mills noted that the Board is asked to look at Town Law §267 when reviewing a variance request. There are five (5) criteria in the law. One criterion is whether the variance would create an undesirable change in character of the neighborhood. The size of this variance would create an undesirable change in the character of the neighborhood. The benefit sought by the applicant can be achieved in another way; the property could be sold as one parcel instead of two. A 41' frontage variance and a .53 acre variance are substantial requests with regards to the overall size of the property. The size of this variance would

have an adverse affect on the neighborhood. The family has owned the lots for a long time; they could have acted in a different manner earlier than now.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Nay		

MOTION CARRIED.

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on July 10, 2012, as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 8:57 p.m.

Carolyn Delgato
Senior Clerk Typist