

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday October 9, 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:

Darla Goodband	Diane Hammill
Michael Hammill	Debbi Ferrentino
Peter Rizzo	Rick Heavern

**Old Business**

**Appeal No. 2** (from August 2012 meeting)

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:**

Chairman Henning explained that the request was previously tabled based on the fact that the applicant did not own the property at that time. Darla and Ron Goodband are present and they now own the property. Mr. Goodband said he wants to add onto the garage so there is a three (3) car garage. The applicant submits architectural drawings per the request of the Board at the last meeting. There will be no additional driveway. A peak was added to the front of the structure so it won't look off-centered.

Mr. Michnik's concern is regarding sight lines for people coming through the area. He said this seems to be a concern of the neighbors as well. He suggested placing the addition elsewhere on the property. Ms. Goodband said there is a drainage ditch where Mr. Michnik suggested the relocation. There are also trees in other locations that would need to be removed. The trees on the island do not screen the view as much as the addition would. Mr. Goodband said to re-locate the proposed addition would be substantially more expensive. The applicants spoke with the neighbors and once they saw what the Goodband's were

proposing, the neighbors were ok with the project. Neighbor notification forms have been completed but are not on file. The applicant explained that they need the addition because they have three (3) cars and a double wide snowmobile trailer that they would like to store. There is a drainage ditch on the south east side of the house; they can't block that ditch because it drains the lot. There is a 15' wide public utility easement that runs along the south and west side of the property.

Mr. Mills said there is not an easement close to the house and wondered why the addition can't go on the other side of the garage. Mr. Goodband explained that there is the ditch on the other side of the garage.

The Goodbands are in the process of replacing the porch. Mr. Mills asked what materials will be used. Mr. Goodband said the front of the house will most likely be redone in stucco and brick or stucco and stone.

Mr. D'Amato thinks there are other options for the applicant. Mr. Goodband said he got the idea from the house around the corner.

Mrs. Burkard said she is concerned with the line of sight for the people driving down Galbraith Road. Rules are put in place of safety reasons. Ms. Goodband asked why the trees and the berms are not an existing line-of-sight concern. Mrs. Burkard said the difference is that the proposed structure is closed in whereas you can see through the trees. Ms. Goodband said the trees and the berm were put up so you can't see through them. Mr. Michnik clarified that those trees are located way before the driveway.

The Goodbands bought the property knowing they wanted to add a third garage onto the existing garage. Mr. Goodband said if he knew he couldn't add the third garage he probably wouldn't have bought the property. Mr. Goodband thought once the Board saw the plans and once the neighbors were informed he didn't think it was a big issue.

**ACTION:**

Motion by Arthur Henning to approve Appeal No. 2 under Old Business, as written. There is no second.

MOTION FAILED.

## New Business

### Appeal No. 1

Michael and Diane Hammill  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow for the construction of a detached accessory structure in the front yard space of a primary residence.
- 2.) A 3.5' variance to allow for a 6.5' side yard setback to a detached accessory structure in the front yard space of a primary residence.

Both items apply to the request to allow for the construction of a new detached accessory structure (shed) at 4395 Homestead Lane.

**\*Please note: Shed is currently constructed at residence.**

Appeal No. 1 is in variance to §229-44(E) and §229-44(F)(2).

### **DISCUSSION:**

Diane and Michael Hammill are present. Mr. Hammill explained that they had a 10' x 20' shed installed on the south side of their property. At that time they had the 8' x 10' shed temporarily moved over to the other side of the house, in anticipation that his brother-in-law would take it. The plans changed and the Hammill's started to put the shed to use. It has been converted into a potting shed and stores two (2) push mowers.

Two (2) neighbor notification forms are on file.

Mrs. Burkard asked why the 8' x 10' shed isn't moved next to the other one on the property; it really stands out in its current location. Mr. Hammill said there isn't enough space to put it next to the other one, and it would restrict access to the garage. The larger shed is used to store an antique car; they would not be able to put the smaller shed on that side because the car couldn't be pulled in and out if the second shed was there.

Mr. D'Amato noted that the applicant's original intention was to get rid of the smaller shed. He thinks the applicant should still get rid of it, he doesn't think it looks good in that spot; it affects the sight line for the whole neighborhood. Going east, none of the homes have a shed in the front yard; this would be the only one. Mr. D'Amato does not want to set a precedent.

Mr. Mills agreed with Mr. D'Amato. He asked if the applicant has any compelling storage issue that is typical to their lifestyle that they need the additional storage. Mr. Hammill said their lifestyle includes the gardening of berries, peppers and tomatoes, as well as flowers. The 200 square foot shed is being used for housing and maintenance of the antique car. Mr. Hammill said he could move the small shed to a less intrusive location on his property. Mr. Mills said it will help if he moved the shed closer to where the other one is, out of view of the neighbors. Mr. Hammill suggested moving the shed closer to the house up against the garage wall. The shed must be 6' away from the house.

Mr. Michnik thinks the best location for the shed would be on the south side of the property and work it into the landscaping, placing it closer to the larger shed. Mr. Michnik is not in favor of the current location of the shed. The shed is on skids.

Chairman Henning asked for confirmation on the comment that it won't be a hardship to move the shed. Mr. Hammill said it is not a hardship and he agreed that it would be better to move it than to take it down. Chairman Henning asked if the applicant could move the shed within 30 days if the request is denied. Mr. Hammill said he could do that.

### **ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **deny** Appeal No. 1, subject to the existing shed being relocated to come in compliance with the law within 30 days.

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

MOTION CARRIED.

### **Appeal No. 2**

Deborah Ferrentino  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant an 8 square foot variance to allow for a 12 square foot home occupation sign at 6550 Goodrich Road.

Appeal No. 2 is in variance to §181-3(E)(1).

### **DISCUSSION:**

Deborah Ferrentino is present and explained that she just lost her job for the third time as an art teacher and she would like to start giving lessons from her home. The sign would enable her to obtain clients and customers.

Chairman Henning asked if it is possible to bring the sign in compliance with the law. Ms. Ferrentino said she did not understand that her proposed sign was not in compliance.

Mr. Michnik said this is a large variance and he does not want to set precedent if this was granted. The property is not zoned for this type of sign.

Ms. Ferrentino said there is a sign there already, the sign that she wants to put up is way smaller than what is there. Just the frame of the sign is there. She said she can make it smaller, that is not an issue. The people next to her are commercial. There is a house down the road from her that put up landscaping signs, there is also the car shop, that whole line is full of signs so she didn't feel she would be asking for something that is that different from what is already there.

Mr. Mills clarified that a 2' x 2' sign is allowed in that area. He asked the applicant if she could accomplish her objective with this size sign. She said she supposes she could but a 2' x 3' would be a little easier. She owns the premises and rents out on side. She works with Photo Shop and teaches people

how to use the computer to do artwork and digital photography; she doesn't think anyone else in the area does this.

Mrs. Burkard is concerned with setting a precedent if this request is granted. She suggested the applicant advertise in the Clarence Bee and let the schools know so they can refer students to her.

Ms. Ferrentino would make the sign. It would hang on a metal frame. If it was approved at 3' x 2', the three feet would apply to the height.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 2 with the condition that the sign not exceed 3' x 2', the applicant can decide whether the 3' measurement is to be the width or height dimension of the sign.

**ON THE QUESTION:**

The frame is not included in the 3' x 2' dimension. It is clarified that the applicant is not asking for an illuminated sign. It will be a piece of wood that the applicant will paint. She may use a flood light to shine on the sign.

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

MOTION FAILED.

**Appeal No. 3**

Peter Rizzo  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 390' variance to allow for a 590' front yard setback for the construction of a new primary residence at 10705 Miland Road.

Appeal No. 3 is in variance to §229-41(C).

**DISCUSSION:**

Peter Rizzo, and his sister Lucille Rizzo, are present. Mr. Rizzo has owned the property for over 30 years, there was a duplex on it. For that period of time the basement was always wet. They decided to take the building down and build a new house. His first intention was to move back a bit, but the land tapers to a swale and the house would be in the middle of the swale. If he moves it further back then he will get into the Blue Spruce and Norwegian trees; he does not want to chop the trees down. Mr. Rizzo went behind the trees where the land is higher so the drainage would be in front of him. He does not want a wet basement. He knows the utilities will be expensive. The house would be a 2400 square foot ranch. The driveway will be on the east side of the property and three feet off the property line. They will use the existing barn driveway and it will go through the trees, a few trees will need to be removed.

Mr. D'Amato noted that the original house was built in the 1800's; basements were not well built back then. Mr. Rizzo said the water did not come from the basement walls, it came from the floor. Mr.

D'Amato said today's technology and builders, he is sure they can build in the exact location of where the house was, or maybe 100' back. The builders would bring in fill and do what they needed to in order to keep the basement dry. Mr. Rizzo said he went through that scenario with two builders and the result was his basement would have to be 42" into the ground to get the taper that is needed to keep the water away from the house. One builder said that's stupid. If the house is put on the swale he creates problems for all his neighbors' drainage. Mr. Rizzo said he would need 150 loads of fill if he were to build where the other house was or within 100' of that location. The surveyor provided Mr. Rizzo with elevations. He said it is a trade-off with regards to expense: buy fill or dig a hole. There is a pond on the property next to his and that pond needs egress for excess water that flows through it and when it floods. To put a house near that pond does not make sense. Mr. Rizzo looked at all these issues and options prior to the house being knocked down. The property consists of approximately five (5) acres. Mr. D'Amato asked what will happen with the barn on the property. Ms. Rizzo would like to have the barn removed. It is expensive to relocate trees and there is the chance that they could die.

Mr. Mills voiced his concern with the amount of distance of the requested setback. Mr. Rizzo said if he put the house closer to the road, so much fill would be needed that the house would sit so high up and stick out like a sore thumb. Mr. Mills would like to see the house more in line with the other homes but he understands the thought process of not wanting to disturb the trees. Mr. Rizzo said he is in line with the new house that is being built. Mr. D'Amato said Mr. Rizzo's proposal is not in line with the new house, that setback is at 350'. Mr. Rizzo is asking for 590'. Mr. Rizzo said he can see the neighbors two car garage from where his front door would be.

Mr. Mills is concerned with the impact on the neighbors. The neighbor to the east will probably not be able to see Mr. Rizzo's house because of the trees. Mr. Rizzo said he is going to clean up those trees and bring an elevation in of about 4', so his house will not be exclusively obstructed. Mr. Mills said if Mr. Rizzo built his home up front, where a variance isn't needed, his neighbors would not see him in their back yard. Now, with this proposal, there is the possibility the neighbors will see Mr. Rizzo's structure in their back yard. This is a similar situation with the neighbor to the west. To mitigate this, Mr. Rizzo could put additional trees on the east and west sides of his property, Mr. Mills asked if the applicant is amenable to this being a condition. Mr. Rizzo said he is going to do that. He is going to plant accent trees all over the place. He is in agreement to the condition if the request is approved.

There are two (2) neighbor notification forms on file. Both neighbors had no problem with the plan. Mr. Mills explained that the Board's review is not only for current neighbors but for future neighbors as well.

Mr. Michnik understands that the trees have sentimental value to Mr. Rizzo but if the trees are left in the front of the property and he coordinates with the neighbor next door, there won't have to be a lot of trees removed on the back side. It would be fair to everybody if he built in line with his next door neighbor at 300' or 350'. Mr. Rizzo thought of that but said that would put him so close to the trees in his front yard, he would have to knock a lot of the trees out to get a front view. Mr. Michnik said there is room in the cove area to build a ranch; he may have to remove six (6) trees. Mr. Michnik thinks the applicant is asking for an extreme variance. He would consider a setback of 350'-380'; this would almost be in line with the neighbor next door.

Chairman Henning reads a letter from the Engineering Department dated October 1, 2012: "The Engineering Department has reviewed the above mentioned request. There appears to be a drainage ditch on the parcel that is located on the Town of Clarence Drainage Map. Any work in or near this area will

require coordination with the Engineering Department.” The letter is on file. Mr. Rizzo is familiar with the letter. He spoke with Mr. Lavocat who advised him to use a 24” pipe. That 24” pipe is at the site.

Chairman Henning asked the applicant if it is a hardship for him if this request is tabled. Mr. Rizzo is worried about the weather. Chairman Henning thinks it is in the best interest of the applicant to table the request at this time. Mr. Rizzo agreed.

It is clarified that a setback option that Mr. Rizzo should look into is 350’-380’. If that option does not work for Mr. Rizzo, he needs to come back to the Board with good reasons to justify his request.

#### **ACTION:**

Motion by David D’Amato, seconded by Patricia Burkard, to **table** Appeal No. 3 based on the discussion noted above.

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

MOTION CARRIED.

#### **Appeal No. 4**

Rick Heavern  
Agricultural Flood Zone

Requests the Board of Appeals approve and grant 3 variances to allow for the creation of 2 new building lots at 8935 Tonawanda Creek Road:

- 1.) **3 counts:** a 3’ variance to allow for a building lot having 147’ of public road frontage.

Appeal No. 4 is in variance to §229-30(B).

#### **DISCUSSION:**

Rick Heavern is present. Chairman Henning noted that the applicant was before the Board two (2) months ago. The applicant has made some changes to his request and will present them to the Board this evening.

Neighbor notification forms are on file. There is a note from Marsha McCulloch, who is a neighbor, she is against the variance. Mr. Heavern is aware of this. The note is on file. Mr. Heavern owns a lot with 441’ of frontage and he wants to divide it into three (3) lots that are equal in size, that being 147’ of frontage each. He has someone willing to buy two (2) of the lots. Each lot would be approximately one and half acres. One lot would go back 350’ while another goes back 450’. He would keep the third lot for himself. He would sell 3 acres and keep the remaining 31 for himself. He needs to show the person who wants to buy the two (2) lots that he can obtain a variance to build on both lots.

Mr. Michnik said if this was approved the Board may put a stipulation on the approval that the lots must be sold within 30 days. Mr. Heavern said he would be ok with that but asked that the Board consider 150 days.

Mr. Heavern would not build his house right away. Selling the lots will financially help him when it comes time to build his house in a couple years. Mr. Michnik asked if the applicant would be comfortable with another condition stating the lots can only be single family residences, especially his larger lot. Mr. Heavern is fine with that; he will not try to develop his large lot any further. He has owned the parcel for two and a half years. Mr. Mills asked if he knew the frontage requirements when he bought the land. Mr. Heavern said not really, he did not buy the land specifically to sell it, he was going to try and keep it for himself, but that just didn't work out. If this request was denied Mr. Heavern would likely sell one (1) of the lots and keep the remaining property for himself.

Mr. Mills asked if the applicant tried to purchase additional land from adjacent neighbors so he wouldn't need a variance. Mr. Heavern didn't think there was room on either side; his one neighbor does not want to talk to him let alone sell him some land. Mr. Heavern tried to work with her but she is not interested. The house that is on the other side seems to be a double and only 20' from the lot line, it doesn't look like there is room for 9'. Mr. Mills said it would only be 4 ½' on each side.

It is confirmed that the law changed to require 150' of frontage in 2005, before that, it was 100'.

Mr. Heavern said the potential buyer of the property wants to build two houses on the parcel, that's why he is asking for the split.

Mrs. Burkard asked if the neighbor who is objecting to speak with Mr. Heavern could be under the impression that rental properties are being built there. Mr. Heavern said he doesn't think so; he never used the word rental in any conversation with her. He thinks she just wants vacant land next to her. Mrs. Burkard asked the applicant if he would get the same amount of money if he sold the parcel as one large lot. Mr. Heavern does not know, but if this request is denied he may look at that as a back-up plan. Mrs. Burkard does not want to set a precedent for granting smaller lots.

Chairman Henning reads a memo from the Engineering Department dated October 1, 2012: "The proposed requested minor subdivision does not impact compliance with Local Law 03-2000 Flood Damage Prevention. The proposed building lots appear to be located outside of the 100 year floodplain. Elevations are required at time of building permit application to verify." The letter is on file. Mr. Heavern understood from the floodplain map that the area is very dry, but he didn't know there was something that needed to be done. When he goes for the building permit, he will be asked to provide elevations and a survey.

#### **ACTION:**

Motion by Ryan Mills, seconded by David D'Amato, to **deny** Appeal No. 4 as the applicant can accomplish his objective by selling the parcel as one lot, instead of two. Based upon the area and condition this would create an adverse change in the neighborhood. The request is substantial. The request would have an adverse environmental impact based on the number and size of the parcels. The hardship is self-created; the applicant had an opportunity to become aware of the frontage requirements.

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

**MOTION CARRIED.**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on September 11, 2012, as written.

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

MOTION CARRIED

Meeting adjourned at 8:35 p.m.

Carolyn Delgato  
Senior Clerk Typist