

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday November 13, 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

Other interested parties present:

Lisa Leising	Todd Leising
Jennifer Passero	Joseph Rey
Timothy Polka	Gregg Marvin
Lucille Rizzo	Pete Rizzo
Mark State	Stanley Walerowicz
Robert Kasprzak	Julie Kramer
Dawn Thompson	Brian Dussault

**Old Business**

**Appeal No. 2**

Todd and Lisa Leising  
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 65' variance to allow for a 175' front yard setback to the construction of a new primary residence at 9025 Sesh Road.

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

**DISCUSSION:**

Todd and Lisa Leising are present. Chairman Henning noted that the Leising's were before the Board on August 14, 2012 and were approved for a 150' front yard setback for the construction of new home at 9025 Sesh Road.

Mrs. Leising said Jennifer Passero, who will be building next to the Leising's and is present at this meeting, said the 25' difference is not a big concern to her and her husband. There is a letter on file stating Ms. Passero's thoughts. Neighbor Joe Ray is also present and Mrs. Leising said he is also in favor of what they are requesting. Now that there are no objections to the 175' front yard setback from the neighbors, the Leising's are requesting it again. They are aware of privacy issues and will plant trees as

necessary to provide privacy for the neighbors. Mrs. Leising said the average setback should be more than 110' because there are a number of houses in the surrounding area that are setback much further than that. 8945 Sesh Road was granted a variance for 100' variance creating a 300' lot line setback, so Mrs. Leising figured there was already a 200' line in place. 9006 Sesh Road is setback significantly more than what the Leising's are asking for.

Chairman Henning asked why 25' is such a big difference to the applicants. Mrs. Leising said it is important to her because of privacy concerns. They really wanted to go back 200'. They do not want to be at 110' which is what the older homes on either side of their property are at. 8975 Sesh Road is at 200'.

The Leising's closed on the property in March 2012. Mr. D'Amato asked the applicants if anyone mentioned a setback to them when they purchased the property. They said no. Mr. D'Amato said that is one of the first things people look into when they are purchasing property. Mr. D'Amato voiced his concern with the Leising's asking for the law to be changed for something that is their problem because they didn't do the homework and the research. Now the Leising's are doing their homework to try and prove the Zoning Board of Appeals members wrong. Mrs. Leising said a standard has been set, they are not asking for something unreasonable.

Mrs. Burkard asked if it would look better with the Leising's house and the neighbor's house at a 150' setback so as not to create such a hodge-podge. Mrs. Leising said there is really no consistency in with the homes in the area now.

Mr. Callahan clarified that the average setback will be in the 200's because of the existing 600' setback in the immediate 500' area next to the property in question.

Mr. Michnik asked Jennifer Passero why she changed her mind and is now in favor of 175' setback. Ms. Passero said it is not that far and the Leising's are nice people and she wants friendly neighbors. She is not opposed to the variance.

#### **ACTION:**

Motion by Arthur Henning, seconded by Patricia Burkard, to **approve** Appeal No. 2 under Old Business as written.

Patricia Burkard	Aye	David D'Amato	Nay
Ryan Mills	Nay	Daniel Michnik	Nay
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:**

Pete and Lucille Rizzo are present. Chairman Henning noted that this request was tabled at the last meeting. Mr. Rizzo said the Board wanted him to show reasons why he is asking for the variance. There are two important reasons for the request: to have a dry basement and a functioning septic tank system. Tim Polka from Polka Engineering is the architect and is present along with the contractor Gregg Marvin. Mr. Rizzo referred to a survey that shows a swale on the property, under the direction of Town Engineer Timothy Lavocat he put 24" culvert pipe to alleviate the problem. The ditch was obstructed with the last rain storm. Mr. Rizzo reads a letter dated October 15, 2012 from Michele Clark of Creekside Boundary: "As you will notice the spot grades in the area of the original house location are higher than those in the current house location. Therefore, you will not have to go as far down into the ground with your foundation if you were to use the originally proposed location. Also, while staking the original house location, it is worth noting that your proposed house did not appear to be any farther back from the road than the new house that is being built to the west of your property." The letter is on file. An expert on septic tanks advised Mr. Rizzo to build his house on the highest point of the property so there is a gravity flow and the septic tank will work.

Mr. Marvin said trees could be eliminated but the real issue is that the 380' setback is 8" lower than the original home site where they have water problems, by moving the setback another 100' back would raise the house 2'6" which would get him out of water problems.

Mr. Rizzo said his proposed location for his new house would be in line with Tesmer's new build. Mr. Mills voiced his concern with the side yard buffer for the neighbors. Mr. Rizzo said it is extensive and during the summer you can't see. Mr. Mills referred to the photo and said it looks barren. Mr. Rizzo said the foliage is dense along his property line for 1,000'. Photos are in file. Mr. Mills would like to see more extensive landscaping/buffering on the west side property line. Mr. Rizzo agreed; he will look at it during the summer and discuss it with his neighbor.

Mr. Michnik asked for confirmation from the applicant that the home could not be built with any less of a setback. Mr. Rizzo confirmed that is true. The grading was shot twice to be sure.

Chairman Henning referred to the memo from the Engineering Department noting that any work in or near the drainage ditch will require coordination with the Engineering Department; a copy of it is on file. Mr. Rizzo is aware of the letter and its content.

**ACTION:**

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 3 under Old Business, as written with the condition that some foliage buffer installed along the west side facing Corigliano's house and the recently constructed Tesmer home. The foliage should be installed within three (3) months from the issuance of the Certificate of Occupancy. The applicant is to work with the neighbors on the details of what will be planted. Mr. Rizzo agreed.

**ON THE QUESTION:**

Mr. Rizzo agreed to the condition.

The applicant came forward with substantial evidence showing this is the only practical logical location for the home to be built upon due to significant water issues on the property.

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

MOTION CARRIED.

### New Business

#### Appeal No. 1

Mark State  
Residential Single Family

Requests the Board of Appeals approve and grant a 168 square foot variance to allow for the construction of a detached accessory structure (pool storage building) 368 square feet in size at 5060 Winding Lane.

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

#### **DISCUSSION:**

Mark State is present and explained he put a pool in two (2) years ago and would like to put a shed up to store all the pool equipment. The proposed location is such that it wouldn't be seen from the street. He is considering putting Dryvit on the front of the structure. It will be vinyl sided on the other three (3) sides. There will be two (2) 6' doors that swing in and full length windows in the front. This will be a big improvement to the property. Mr. State did not discuss his variance request with the owner of 5080 Strickler Road. He spoke with the neighbors at 5070 Strickler and 5006 Winding Lane Farms; they had no objections. Those neighbor notification forms are on file. There will be no plumbing in the structure, just electricity for lighting.

Mrs. Burkard asked if the applicant plans on landscaping the side of the structure that faces Strickler Road. Mr. State said yes he will bring the fence around from the side of the house, he will plant pine trees, foliage and flower beds.

#### **ACTION:**

Motion by Daniel Michnik, seconded Ryan Mills, to **approve** Appeal No. 1, as written, with the condition that there be landscaping installed to block the view on the neighbor at 5080 Strickler Road.

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

MOTION CARRIED.

**Appeal No. 2**

Ross and Son's Jewelers  
Major Arterial

Requests the Board of Appeals approve and grant a 21 square foot variance to allow for a pylon sign 81 square feet in size and the installation of an LED sign display board at 4125 Transit Road.

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

**DISCUSSION:**

Stan Walerowicz, owner of Ross Jewelers in Hamburg, NY, is present. He explained that his son, Ryan, wants to open Ross and Son's Jewelers on Transit Road. Rich Pierpaoli, with Xpress Signs, is present to discuss any technical aspects for the sign. Mr. Walerowicz said they need the sign to compete with the jewelers down the street and in the area. They have leased the building and will be moving in shortly. Chairman Henning reads a letter from the property owner, dated October 22, 2102: "Please be advised that Mr. Ryan Walerowicz has my consent to put both LED and digital signs on the property at 4125 Transit Road, Clarence, NY 14221, Unit No. 4. He will be representing me at the hearing. Shane Khanjani, President, 4125 Transit Road, Inc." The letter is on file.

Mr. Michnik noted that there will be two signs on the pole sign for this business. Mr. Callahan clarified that the applicant will occupy space on the existing pole sign, but the variance is to add the LED sign, which is over and above what is allowed by the Sign Law. The sign will be full-color. Mr. Michnik asked if a condition was put on the sign to have one or two colors instead of full-color would that be acceptable to the applicant. Mr. Pierpaoli said this sign will be similar to Kennedy's Cove with regards to more letters than pictures and it will comply with the requirements for the allowed time change for the message.

Mr. Mills asked if the applicant could get away with a smaller sign. Mr. Pierpaoli said they could go smaller but the effect of the sign would be greatly reduced. Mr. Mills asked if the applicant knows if the owner would be willing to compromise that section of the existing sign that says "Pomplaza". Mr. Pierpaoli said they talked to the owner about that and Mr. Khanjani does not want to touch that part of the sign.

There are two (2) channel letter signs that have already been approved and will be placed on the building.

Mr. D'Amato asked if the applicant looked at other locations in Clarence. Mr. Walerowicz said he looked at this location seven (7) years ago, but there was a lot of construction going on in the area so he did not move then. He likes this location.

Mrs. Burkard finds the sign confusing and asked if and when another tenant moves in will that tenant ask for another sign as well. It is clarified that the LED sign for the car dealer down the road is approximately 20 square feet; this requested sign for the jeweler is smaller than that. The message on the LED sign will have to hold for 30 seconds; that's the Law. The height of the sign is in compliance to the code.

Mr. Mills asked if the applicant's lease provides any signage agreement. Mr. Walerowicz said he does not think so.

The applicant will have a sign on the north and west side of the building.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 2 as written.

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

MOTION CARRIED.

**Appeal No. 3**

John Thomann  
Residential Single Family

Requests the Board of Appeals approve and grant a 30' variance to allow for a 4' front yard setback to a primary residence for the construction of a new attached garage at 4290 Fireside Drive.

Appeal No. 3 is in variance to §229-52(A)(1).

**DISCUSSION:**

Bob Kasprzak, of K1 Architects, is representing Mr. Thomann. Mr. Thomann is present. Mr. Kasprzak said the existing garage is going to be turned into a family room, so the applicant is looking to add a new garage onto the house.

Chairman Henning asked why the addition has to be so big. Mr. Kasprzak said it is a two and a half car garage with about six (6) additional feet for storage. Chairman Henning asked if the proposed structure has to be that close to the road. Mr. Kasprzak said the property is basically a triangle and a difficult site to work with. There is a lot of room on that end of the property where they are proposing to located the addition; it flows with the existing house. This is probably the best and only location.

Mrs. Burkard has many concerns about the safety issue. She drove in both directions passed the proposed location and it is very close to the road. If a vehicle is coming around the bend and it skids, it could skid into the garage. Mr. Thomann said it is not that close to the road, it is 30' back from the road. The breezeway will be enclosed.

Neighbor notification forms are on file. They are from the neighbors to the south and west of the applicant's property.

Chairman Henning noted that there is communication from two (2) neighbors who object to the variance. One is from 4270 Fireside Drive and the other from 4250 Fireside Drive. The reasons for the objections are because the proposed structure is too big and too close to the road and it is dangerous.

Mr. Kasprzak said the next intersection "T"s into their roadway so if someone is going to blow around that corner, they would have to go from 0 to 60 in just a few seconds.

Mr. Thomann has owned the property for a year and a half. Mr. D'Amato asked the applicant if he explored other options, perhaps building up, to accomplish the same thing. Mr. Thomann does not want to have a family room upstairs. Mr. Kasprzak said if he built up there would be the fire separation issue between the family space and the garage. He also said building up would mean using existing foundations and walls. It would also add a snow load onto the existing roof which would make it cost

prohibitive. Aesthetically, they are looking at carrying the stone around the base of the garage and using an architectural shingle to match the house.

Mr. Mills is also interested in other options because this is a substantial request. He suggested going behind the existing garage. The applicant said that would limit the yard space. Mr. Mills is concerned with the aesthetics of the area.

Mr. Michnik shared Mr. Mills' concerns. He suggested tying the family room in behind the existing garage. Mr. Thomann said he can't fit his truck in his existing garage now. Mr. Michnik asked if the applicant looked into expanding the Florida room and the existing garage. Mr. Kasprzak said they thought of that but it doesn't lend itself to be big enough for a family room.

#### **ACTION:**

Motion by Arthur Henning, seconded by Daniel Michnik, to **deny** Appeal No. 3, as written.

#### **ON THE QUESTION:**

Mr. Mills said this request does create an undesirable change in the character of the neighborhood. The benefit sought by the applicant could be achieved by a couple other methods, one of them being an addition to the rear of the house or a second story being added over the garage. The variance is substantial based on the amount of feet requested for a front yard setback. The variance would have an adverse affect on the environmental conditions in the neighborhood as there are no other variances this substantial and in front yards. This difficulty is self-created because the house was purchased within the last two (2) years and the applicant could have been aware of Town Code.

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

MOTION CARRIED.

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

Christopher A. Kramer  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 2' variance to allow for the construction of a fence 6' in height within the front yard space of a corner lot at 5260 Strickler Road.

Appeal No. 4 is in variance to §101-3(C)(2).

#### **DISCUSSION:**

Julie Kramer, wife of Christopher, is present and explained they need the variance because if they put the fence flush with the property, the place where they want to put a koi pond would be over the leech field. Jeannette Clark is also present and explained that the Kramer's have received the sign-offs from the neighbors. There is no issue with blocking sight lines for traffic going down either street. It is clarified that the fence will start at the farthest west point end of the garage.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 4, as written with the clarification that the fence will start at the back western corner of the garage, as the applicant requested.

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

MOTION CARRIED.

**Appeal No. 5**

Kenneth Thompson  
Residential Single Family

Requests the Board of Appeals approve and grant a 13.69' variance to allow for the creation of a new building lot having 111.31' of public road frontage at 8880 Clarence Center Road.

Appeal No. 5 is in variance to §229-50(A).

**DISCUSSION:**

Chairman Henning noted that this variance was previously presented to the Board, there is a change in the request which reflects a lesser variance.

Dawn Trippi-Thompson is present and explained she and her husband own the property. Daughter Julie Ludka is present as well; she wants to build the house on the property. Mrs. Trippi-Thompson said they need the variance because the lot is not big enough, it needs to have 125' of frontage in order to build a house and it only has 112' per the survey that William Schutt and Associates did. The surrounding land is an agricultural use and is part of Mrs. Trippi-Thompson's greenhouse business. There are other houses that she owns that are in line with this property, so it would be the perfect spot for another house.

Mr. Mills asked if the applicant explored purchasing more land. Mrs. Trippi-Thompson said she owns all the land surrounding the property in question. There is a house on the adjacent property with frontage of 125', if property is taken from that parcel it would create an illegal lot; you can't create an illegal lot. The applicant's intent was always to develop this parcel as a building lot. The house would be approximately 1700-1800 square feet.

**ACTION:**

Motion by Patricia Burkard, seconded by Arthur Henning, to **approve** Appeal No 5, as written.

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

MOTION CARRIED.

**Appeal No. 6**

Ryan Homes/Jeff Liffiton  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a .98' variance to allow for a 29.02' front yard setback to a primary residence at 5851 Monaghan Lane (Waterford Village Commons, Map Cover #3467, Lot #188).

Appeal No. 6 is in variance to §229-52(A)(1).

**DISCUSSION:**

Brian Dussault, project manager with Ryan Homes, is present and representing Jeff Liffiton. Mr. Dussault said they made a mistake and gave a plot plan that was incorrect to the foundation contractor, it did not show the proper offset between 6' and 8' at the front of the house and it was not checked before the foundation was poured. Mr. Dussault takes full responsibility for what happened and has made internal changes to make sure this doesn't happen again. Prior to the plan being submitted to the Building Department, a Ryan Homes representative will make sure both pieces of documentation match. Prior to the foundation being placed, Mr. Dussault will meet with the concrete contractor to measure the foundation walls before the concrete gets put in the walls.

Mr. Mills asked what the applicant would do if the variance request was denied. Mr. Dussault said they would have to take that portion of the home down, or possibly, the entire house. The total square footage of the house is approximately 3,000. The home is already sold.

**ACTION:**

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 6 as written. There seems to be a hardship in place in that the foundation is intact now and the applicant has stated that there are additional protocols now in place to alleviate this from happening again.

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

**MOTION CARRIED.**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on October 9, 2012, as written.

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

**MOTION CARRIED.**

Meeting Adjourned at 8:42 p.m.

Carolyn Delgato  
Senior Clerk Typist