

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday April 10, 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
Robert Geiger	Patricia Burkard
Jonathan Hickey	

Town Officials present:

Director of Community Development James Callahan
Supervisor David Hartzell
Councilman Peter DiCostanzo
Planning Board 1st Vice-Chairman Robert Sackett
Deputy Town Attorney Steven Bengart
Councilman Bernard Kolber

Other interested parties present:

Greg Wolmering	Joanne Cutspec	Tom Cutspec
Kevin Siskar	Mike Giokas	Al Hopkins
Brandon Hauck	Richard Dorr	Alan Kramer
Giuseppe DeChellis	Anthony Gerstner	Sheryl Rohr
Dorothy Gerstner	Bill Rohr	

Old Business

Appeal No. 3 (from Feb 2012)

Katherine J. Derosé
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 578' variance to allow for a front yard setback of 650' for the construction of a new primary residence at 9650 Lapp Road (SBL #30.00-2-3.111).

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

The applicant is not present.

ACTION:

Motion by Arthur Henning, seconded by David D'Amato to **table** Appeal No. 3 under Old Business.

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

MOTION CARRIED.

Appeal No. 2 (from March 2012)

Switala's Construction
Residential Single Family

Requests the Board of Appeals approve and grant a use variance to allow for the construction of a two-family residence at 6132 Railroad Street.

Appeal No. 2 is in variance to §229-47(A).

DISCUSSION:

Jim Callahan noted that a letter was received from the applicant asking to be removed for this evening's agenda. Chairman Henning read the letter dated April 10, 2012 from Sutton Architecture: "Sutton Architecture is working on resolving outstanding issues that were brought to light at the previous meeting in March 2012 regarding the above listed project and hereby requests that Appeal No. 2 for them be removed from the Zoning Board of Appeals Agenda meeting on April 10, 2012. We respectfully request this item be tabled to the next meeting in May 2012." The letter is on file.

Agenda Item No. 2 (from March 2012) under Old Business remains tabled.

New Business**Appeal No. 1**

Greg Wolmering
Residential Single-Family

Requests the Board of Appeals approve and grant a 24' variance to allow for a 33' front yard setback to a primary residence for the construction of a new attached garage addition at 8185 West Ledge Lane.

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

DISCUSSION:

Greg Wolmering is present and stated that he is getting married in two (2) months and is looking to expand his house. He determined that it is cheaper per square foot to build an additional master bedroom and master bath in the existing garage area and then put a garage in front of that rather than blowing out walls and creating more cost to put an addition on the present home.

Mr. Michnik met with the applicant on site, Mr. Wolmering indicated at that time that there was no other feasible location for an addition because of the way the yard is situated and the lot line.

Mr. Mills asked if the façade was going to be dry stacked stone with a cedar shake. Mr. Wolmering does not have an exact plan for the façade but his intention was what Mr. Mills described. He explained that there is a similar build on a home on Clarherst Drive that was done several months ago. This is the most economical plan to put an addition on to his home. Mr. Wolmering said he needs a new roof on his house so the roof material of the new build will definitely match.

Two (2) neighbor notification forms are on file.

Mr. Wolmering has owned this home for 12 years. He would like the addition complete before winter and will start within the next 3-4 months. He has a contractor who is working on his home for other improvements and will be involved in the addition as well. Mr. D'Amato asked if the trees on the applicant's property would be impacted. Mr. Wolmering said the new build will be on the existing driveway; some protruding branches of the pine trees may need to be cut.

Joanne and Thomas Cutspec, of 8175 West Ledge Lane, are present and submit a written statement which is on file. The concerns are for the privacy, appearance and value of their property. The build would place their home two structures back from the front view. She stated the new structure would obstruct the current view of the neighborhood and the view from the street and theirs is the last home of six on the street. All other homes would have unobstructed views but theirs would not. Other concerns are grading, utilities, other enlargements or variances on the property already. Drainage, air conditioners, generators are also concerns. They would like to maintain the neighborhood as is; this will maintain property values and appearance in the neighborhood.

Mrs. Burkard asked about windows on the existing garage. Mr. Wolmering said there is an existing window and that will remain.

Mr. Mills asked Mrs. Cutspec what she thinks might mitigate this proposal. She said landscaping won't help because there will be a building that is two (2) garage lengths long in front of her lot line. Mr. Mills suggested landscaping along the lot line to make it aesthetically pleasing for Mr. and Mrs. Cutspec. Mrs. Cutspec said there are trees there now, you can see through the trees but you can't see through the building.

Mrs. Burkard asked which house was built first; it is unknown at this time.

Mr. Michnik asked Mr. Wolmering if he thought about building "up". Mr. Wolmering did not consider the option of building a second story because he wants to live in a ranch. Mr. Michnik asked if the applicant could ask for any less of a variance and incorporate some of the existing garage in his plan. Mr. Wolmering was unaware that the Cutspec's had issues with his plan and he doesn't think reducing his plan 6' or 7' will make the difference. Mr. Mills suggested extending the house on the southeastern portion of the home. Mr. Wolmering said he could do that but no matter where he changes the location of the addition to, it will cost him twice as much as what he is currently proposing.

Chairman Henning said he drove by the project site and it appeared that the Cutspec's house was pretty well hidden from the street due to the existing trees there. Mrs. Cutspec said she does not want to look at the side of a building when she comes out her front door.

Mrs. Cutspec said she did not get the notification until last Saturday and has not had a chance to discuss it with Mr. Wolmering personally.

Mrs. Cutspec said Mr. Wolmering's existing garage does not completely block her view.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills **to table** Appeal No. 1 to allow the applicant and the neighbor the opportunity to discuss re-working the plan so it is worthy of the neighbor and the applicant and submit it to the Board.

ON THE QUESTION:

Chairman Henning asked if the applicant and neighbor are agreeable to the action. Mrs. Cutspec is not sure she wants to take on the responsibility of taking on someone else's problem. She is not sure this should lay on her shoulders.

Mr. Mills clarified that the Board is not expecting Mrs. Cutspec to solve the problem, just engage in more dialogue with the applicant about the process. Mrs. Cutspec said she hasn't seen anything. Mr. Mills said maybe that is part of the problem, if she talks with the applicant maybe something can be worked out in terms of a "middle ground".

Mr. Mills would like to see the applicant explore locating the addition on the south eastern portion of the house. It seems that the costs may be similar to what the applicant is currently proposing. Mr. Wolmering said it will double the cost because a garage addition costs half the price of what a house addition would cost.

Mrs. Burkard said the property taxes will be the same no matter where the addition is located because taxes are based on square footage.

Mrs. Cutspec is also concerned with the marketability of her home if the variance is granted.

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

MOTION CARRIED.

Appeal No. 2

Kevin Siskar
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a .04 acre (1,930 square feet) variance to allow for a new building lot having .30 acre (13,070 square feet) at 8146 Stahley Road.

Appeal No. 2 is in variance to §229-60.

DISCUSSION:

Kevin Siskar, owner of the property, is present along with his grandfather, Gerry Haas.

Patricia Burkard recused herself from any discussion and will not vote on this agenda item as she is related to the applicant.

Mr. Haas explained that in order to split up the property, if the County hadn't taken so much of his property, this would not be a problem. The survey shows less than a foot on the one corner of the house and one foot four inches on the back part of the house from what the County owns. The applicant wants to build a two-family home on the east end of the property.

Mr. Siskar said this would be a good investment to help pay off his student loans. Mr. Siskar currently lives down the street on Stahley Road. Mr. Siskar rents the existing house on his property to a family. If the variance is granted he plans to build a duplex on the new lot, he would rent out one apartment and perhaps live in the other. He has owned the property for approximately three (3) years. Both neighbors have signed the neighbor notification forms; the forms are on file. He would like to build the new structure within a year.

There are no proposed designs for a structure as the applicant wanted to make sure the variance would be granted before he spent money on a plan.

Mr. Mills asked why the applicant doesn't split the property and deed himself enough land to meet the code for a building lot. Mr. Haas explained that 15,000 square feet is required, the four stakes that are on the property comprised the 15,000 square feet, the variance ends up on the corner not where he wants to build. Mr. Mills said if Mr. Siskar brought some of that land over to the buildable lot, he wouldn't need the variance. Mr. Haas said he would then be back for a different variance. It is clarified that 15,000 square is required for each lot. Mr. Mills asked if the applicant has approached Mr. Bergman about purchasing property from him in order to obtain 15,000 square feet for both lots. Mr. Siskar has not approached him. The right-of-way is maintained by Mr. Siskar and if that was added back in, it would only be about a 200 square foot difference.

Mr. Michnik asked if the applicant has any idea what size two-family residence would be built on the lot. Mr. Haas said it would have to be at least 30'-35' in depth and estimates that the structure would be 2,400 square feet. Mr. Michnik asked if the applicant would be amenable to a condition to have the project completed in 14 months if this variance was granted.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 2, as written, with the condition that construction must be initiated within a 14 month period in conformance with Town codes and the maximum size of the building will not exceed 2800 square feet.

ON THE QUESTION:

Mr. Michnik asked if a size restriction should be put on the building. Mr. Haas agreed that the maximum size of the building would be 2800 square feet.

Mr. Michnik agreed to amend the motion and Mr. Mills agreed to amend his second to the motion to include the condition that the maximum size of the building on the property will not exceed 2800 square feet. The above action reflects this amendment.

Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Patricia Burkard returned to the meeting.

Appeal No. 3

Mike Giokas
Residential Single Family

Requests the Board of Appeals approve and grant a 903 square foot variance to allow for the construction of 1,103 square foot detached accessory structure (pool house) at 9433 Hunting Valley Road South.

Appeal No. 3 is in variance to §229-55(H).

DISCUSSION:

Mike Giokas, original homeowner, is present and explained that he built house in 1996 and wants to expand the back yard for outdoor living. He purchased additional land from his neighbor a few years ago so he could further buffer in the event he wanted to do additional landscaping. He would like to use the structure for storage and an outdoor facility for a master landscape plan. He would like to apply for a building permit in May and start construction in June of this year.

Patricia Burkard said the plan looks congested and noted the amount of land in the back of the home that could be used. Mr. Giokas explained that he has a deed restriction to stay a certain amount of feet back from an old stone fence which is the original riding fence in Clarence; he wants to keep the integrity of the fence. He does not want to infringe too much on the natural landscape. Part of the architectural plan was to stay closer to the kitchen in the home for outdoor cooking and to be closer to the pool. The stone driveway is a temporary driveway that the applicant put in this past winter because there was a remodeling expansion done to the house. Construction vehicles used the temporary driveway to get to the expansion site and to deliver construction materials.

Mr. Giokas was unable to obtain neighbor notification forms but he sent the forms to his adjoining neighbors via certified mail, the receipts are on file. Mr. Callahan said the neighbor to the west of Mr. Giokas' property came into the Planning and Zoning office today and received full information on the project and knew of the meeting being held this evening.

Bernie Kolber, neighbor, has no problem with the proposal.

Mr. Mills asked for details on the construction materials. Mr. Giokas said the architecture of the proposed structure will be similar to the house. The decking will most likely be stamped concrete. Mr. Mills asked if the applicant could decrease the square footage of the proposed structure. Mr. Giokas explained that the storage space was expanded because he has two children returning from college who will need to store their belongings. Mr. Mills asked if a breezeway was considered. Mr. Giokas said yes, but the problem is the various roof lines and a sunroom that won't allow the roofs to connect.

Mr. Giokas explained that the structure is an open-air structure that would have weather proof garage doors to close it for the winter. The driveway will not be expanded or changed.

Mr. Mills asked about the stairway depicted in the house floor plan. Mr. Giokas said originally they were going to have a full basement, but that is no longer the plan. There will be no stairwell; the accessory structure will be built on slab.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 3 as written.

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

MOTION CARRIED.

Appeal No. 4

Niagara County Produce/Richard Dorr
Major Arterial

Requests the Board of Appeals approve and grant:

- 1) a 32' variance to allow for a 103' front yard setback to parking from center line of public right of way.
- 2) a 21' variance to allow for a 24' greenbelt setback to an adjoining residential use.

Both requests are to allow for the construction of a +/- 87,000 square foot Produce market at 8555 Transit Road.

Appeal No. 4 is in variance to §229-94(D) and §229-94(H).

DISCUSSION:

Al Hopkins, of Metzger Civil Engineering, is present along Brandon Hauck and Richard Dorr of Niagara County Produce.

Jim Callahan provided a brief history on the project. It is currently under the State Environmental Quality Review Act (SEQRA) analysis, however SEQRA is not complete. The SEQRA process was initiated to obtain comments from involved agencies. The DEC has commented that there is an impact on a wetland. Before finalizing the SEQRA review the Town will need input from the DEC as well as DOT and other agencies. The DEC asked if the project could be shifted to the south and to the west to avoid some of the wetland impacts associated with the design as originally submitted. This cannot be taken back to Planning Board and Town Board for determination at this point because the SEQRA review is incomplete. The SEQRA review will address how to mitigate impacts associated with the size of the project. An area variance or a setback variance can be pursued; this does not require the finalization of SEQRA. An answer for the DEC can be obtained.

Mr. Hopkins explained that the building was built in the 1940's and is in need of renovation. There are structural problems with the roofing and flooring that does not allow the owner to re-use the existing building. Originally, a new building was to be constructed and when that was open for business, the old

building would be demolished. Since then, wetlands have been found on the property. The owner has been working with the State and the Army Corp of Engineers for a year and four months. The DEC will approve the sixth plan which is currently before the board assuming the variances can be obtained. Mr. Hopkins noted the changes on the current plan show the proposed building size has been reduced and it has been moved to the south and to the west. Currently, traffic is an issue exiting the facility. The new plan eliminates the existing curb cut that is across the front of the property on Transit Road; that area will be converted to green space. There will be a single entrance on Transit Road and an entrance will be added on Tonawanda Creek Road. In order to preserve the wetland the applicant is asking to encroach on the 45' greenbelt that is required between commercial property and residential property. This would impact the adjacent property owner, however, Mr. Dorr owns that property and, of course, he is in support of the variance.

Mr. Hopkins explained the second request noting that they need a single lane of parking to meet the required parking spaces. By adding this one row of parking the applicant is pushing 32' into the 135' setback requirement which is measured from the building to the center line of Transit Road. Currently this area is paved.

Mr. Michnik asked how truck traffic will enter the site. Mr. Hopkins noted that currently truck traffic enters the site using the same entrance as customers. The proposal shows truck traffic entering the site from Tonawanda Creek Road then turning towards the loading docks while the customers continue on to the parking lot. Mr. Michnik asked if employees can come in through that same route so that variance wouldn't be needed. Mr. Hopkins said there is also a fire access issue where emergency vehicles should be able to get all the way around the building.

Neighbor notification forms are on file.

Mr. Michnik asked if the existing building will be demolished or will it remain as the new building is constructed. Mr. Dorr explained that the warehouse will come down first; this will give him room to put the greenhouse up. The new store will be opened and then the old building will be knocked down.

Chairman Henning asked about the other houses on the property. Mr. Dorr said they will be demolished; the current occupants will be out by April 15, 2012.

Mr. Mills asked the applicant if he explored the option of deeding some of his land that is next to the project site to himself so he would not need the variance. Mr. Callahan explained that the 45' setback is for commercial property that abuts residential property, so it doesn't matter what size the property is, the 45' setback requirements still remains. Mr. Mills asked if the applicant explored obtaining some of the Bowden property to use for additional parking. Mr. Dorr said Mr. Bowden needs his property for his pool business and goes on to say that Mr. Bowden is trying to buy the land on the other side of his to give him more room for his business. Mr. Mills asked if the size of the building can be reduced. Mr. Dorr said it has been reduced three times; this is the absolute minimum he can go.

Mrs. Burkard likes the idea of an entrance/exit on Tonawanda Creek Road.

ACTION:

Motion by Daniel Michnik, seconded by Patricia Burkard, 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

Affordable Senior Housing Opportunities of NY
Commercial

Requests the Board of Appeals approve and grant a 53 unit or a 5.9 units per acre variance to allow for the construction of a new multi-family senior housing apartment development having 125 units or 13.9 units per acre at 8040 Roll Road.

Requested living unit density: 13.9 units per acre
(125 units)

Maximum living unit density: 8.0 units per acre
(72 units)

Resulting variance request: 5.9 units per acre
(53 units)

Appeal No. 5 is in variance to §229-126(B).

DISCUSSION:

Chairman Henning noted that the applicant was before the Zoning Board of Appeals in January 2012 in which the request was denied. Since that time the applicant has reduced the request.

Jeff Haucks, representing Affordable Senior Housing, explained that he is looking for the variance to accomplish building a much needed senior housing facility in the Town of Clarence. This facility is for seniors who are capable of independent living. It will attract people from Clarence. Affordable Senior Housing will build and manage the facility. The traffic impact will be relatively minimal; studies from their other facilities show 15-17 cars in the morning and 20-25 in the evening. Mr. Haucks noted that there have been similar variances granted to other apartment communities in Clarence, he feels this variance request is consistent with those previously granted.

Mr. Callahan noted that the SEQRA review has been completed on this project. The Town Board has acted and initiated a Negative Declaration on the project design at a maximum density of 138 units per acre. While issues related to the density variance including the architectural style landscaping and that type of thing are in play for this Board's consideration, many of the environmental factors including traffic, wetlands, archeology and general concept site plan characteristics have already been addressed in that Negative Declaration.

Mrs. Burkard asked if the change in unit count will affect the rents that will be charged. Mr. Haucks said no, the rents are market rate rents and will be between \$700 and \$850 per unit depending on size.

Mr. D'Amato said the representative that came to the previous meeting said there was no "wiggle" room to change the proposal. This new proposal is only six (6) units less than the previous proposal. Mr. D'Amato does not see any difference in what the applicant is proposing now.

Mr. Mills said it is a positive project but is concerned with the size of the variance request. He asked if the density can be lowered any more. Mr. Haucks said in order for the project to be economically feasible from a development standpoint, the density needs to be right around the proposed number. The "six" represents the margin that is doable. Mr. Mills would like to see the number come down considerably from the original 131 but it is up to the applicant to tell the Board what is the bottom line. Mr. Haucks said they have hit the bottom line with this third request. Mr. Mills asked about ingress/egress on Transit Road; he thinks that would help this project with respect to traffic. Mr. Haucks has not looked into this. Mr. Callahan noted that the Planning Board required the bullnoses so cross access could be a possibility in the future when adjoining land use developed; this was addressed by the Planning Board during the SEQRA review.

Mr. Michnik asked what size the six units would represent. Mr. Haucks said approximately 5,000 square feet. He draws attention to the 300' setback in which landscaping will be installed in front of the parking spaces.

Chairman Henning asked if the house closer to Transit Road would be used as office space or torn down. Mr. Haucks said he is uncertain what the plans are for the house, but he thinks it would be torn down.

If the request was denied, Mr. Haucks said they would probably walk away from the project because it would not be economically feasible.

Mr. Michnik asked if there is any IDA money or tax breaks given to the applicant as investors on the property. Mr. Haucks said nothing that he is aware of. The property would have full assessed value for taxation.

The applicant is under contract to buy the property. Mr. Mills referred to the Concept Plan dated March 21, 2012 and asked if the applicant has looked into purchasing any property around the project area, specifically the "L" shaped property to the south, so they wouldn't need a variance. Mr. Haucks said that has not been looked into.

Supervisor David Hartzell thanked Affordable Senior Housing for coming in and proposing this project. Clarence is short on senior citizen housing but has an aging population. Transit Road is a great place for this project as it is walkable for the senior citizens and affordable for them.

Dorothy Gerstner lives at 8050 Roll Road and is the owner of the property at 8040 Roll Road. She wants to sell the property at 8040 Roll Road. She thinks this would be a good project; it will not impact traffic because seniors don't go to work.

Anthony Gerstner lives at 8040 Roll Road and feels this is a good project. Something is going to be developed in that area and if patio homes were proposed they would be allowed to abut the surrounding properties with no buffer required as is required with this project.

Allen Kramer, of 8080 Roll Road, is representing himself and his father in law, Mr. DeChellis who lives at 8090 Roll Road. Mr. Kramer said the concern is that the development and the landscape is going to have an effect on the surrounding neighborhood with the structure being so high and the density of the population. He thinks there are other alternatives that can be met to achieve the same outcome. He suggested patio homes as they carry a smaller footprint of 45' x 75' lot space so 36-40 patio homes could

be built on the property. He does not think the issue is so much that the structure will be butting up against surrounding properties but does it fit into the community. He thinks traffic will be impacted, it is a challenge now. He submitted a letter stating his and Mr. DeChellis' concerns, the letter is on file.

Mr. Michnik referred to information submitted with the variance request from Affordable Housing in which it is stated: "The Erie County Traffic Engineer has advised that the proposed project will have minimal impact on the traffic in and around the surrounding area." A traffic study has been done on the project.

Sheryl Rohr doesn't understand the issues opposing the project. It is not a high-rise apartment. It would not detract from the community in any way. There are no issues with drainage at the site or surrounding areas. It is not protected wetlands nor is it a swamp or farmland. The variance is not being requested for all of Clarence, just for this property.

Mr. Michnik said the applicant has answered his questions and concerns since the project was before the Board previously.

Mr. Callahan said the Town Board will need to approve this project for a Special Exception Use Permit to allow the use. The project has been before the Planning Board.

ACTION:

Motion by Patricia Burkard, seconded by Daniel Michnik to **approve** Appeal No. 5, as written.

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

MOTION CARRIED.

Motion by Arthur Henning, seconded by David D'Amato, to **approve** the minutes of the meeting held on March 13, 2012, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:30 p.m.

Carolyn Delgato
Senior Clerk Typist