

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday July 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
Patricia Burkard	Jonathan Hickey

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart

Other interested parties present:

David Sutton	Nick Klemann
Kelly Klemann	Gayle Brace
Mark Nealen	Sue Beck
Chris Simkin	Kelly Simkin
Rick Heavern	Nancy McCulloch
Candace McCulloch	Joe McCulloch
M. McCulloch	Michael Haefner
Michael J. Ogden	Todd Leising
Matt Meister	

Old Business

Appeal No. 2 (from March 2012)

Switala’s Construction
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) (2 counts): a 10,678 square foot variance to allow a building lot having 9,322 square feet.
- 2.) (2 counts): a 55.8’ variance to allow a building lot having 69.2’ of public road frontage.
- 3.) a 22.5’ variance to allow for a 12.5’ front yard setback to a new primary residence on a corner lot.

All requests are to allow for the creation of two (2) building lots and for the construction of two (2) new single family residences at 6132 Railroad Street.

Appeal No. 2 is in variance to (1) §229-49(A), (2) §229-50(A), (3) §229-52(A)(3).

DISCUSSION:

David Sutton is present. He submits a new construction cost breakdown, this information is on file. Mr. Sutton did research in terms of the adjacent properties. He has a complete compilation of the neighborhood and noted that 71% of all houses in the neighborhood require a lot frontage variance, 85% would require total lot coverage. It is a good indicator that the size of the property in question, in terms of the proposed two (2) houses, is more compatible, more marketable, and more salable. Mr. Sutton submits the compilation to be kept on file. Mr. Sutton said the applicant is willing to agree to a limitation on the size of the footprint of the building. They will adhere to any design restrictions that might enhance the design for the sake of the neighbors. They will commit to a single-story, eliminating a two-story proposal all together. It will be compatible to a low-density, low-impact type of house. The driveways have been re-located so they are most respectful to the neighbors. They are willing to sub-divide the property. Mr. Sutton is aware that the neighbor to the south may be interested in purchasing some property to build something for a relative. He does not think this is a density issue. His client is prepared to build the houses immediately and put them on market on spec for sale. If the lot is not allowed to be subdivided his client is not prepared to build a house on speculation because of the costs associated with either carrying the whole lot or the bigger house that would be associated with the bigger lot.

Mr. Hickey asked why the applicant is not ready to move forward with the single build. The risk of the size of the house that would have to be built is not one the applicant wants to take. He knows that the two houses could be sold at market value. The proposed houses are 1300 square feet, as requested at the last meeting as a possible consolation. The smallest size single house would be 2600 square feet. Mr. Sutton had several conversations with the neighbors after the last meeting. He thinks they were concerned about a density issue and the impact to the neighborhood. They were all in favor of building a house on this property. His research showed that building two houses is more in keeping with the properties in that neighborhood than building a larger single home. It will not be denser or more concentrated than the majority of the housing stock in the neighborhood. A 2600 square foot house would cost approximately \$300,000+ to build, which includes the land. The total assessed value of the housing stock in the neighborhood show very few houses that are in the high \$200,000's, most are in the \$100,000-\$200,000 range.

Mr. D'Amato asked for clarification on the cost estimate that Mr. Sutton submitted. Mr. Sutton said what he submitted is the exact cost of what it would be to build the house. These figures are from the real cost of the same house, just in a different location. Mr. D'Amato said nothing has changed on this request since it was submitted. The applicant is a builder in this area; he knows the Zoning Laws and is looking for the biggest bang for his buck. Mr. D'Amato said the applicant is asking the Board to change the laws and change the neighborhood so he can get more for his dollar. Mr. D'Amato thinks he can build a single family home and recoup some of his money as a business person so he can walk away and learn from this. How does the applicant know he can sell two (2) homes there? Mr. Sutton said the proposed homes are in high demand and are being built. Mr. D'Amato does not see this.

Mr. Mills said it seems that the main concern is financial hardship but he is not seeing enough evidence that building 1700 square foot home would translate to a reasonable return on the applicant's investment. Statistics were provided in terms of frontage, depth and acreage but it seems these two parcels would be at the very low end at .21 acres per side, which is less than the majority. Mr. Sutton agreed that the dimensions are on the low end. Mr. Mills finds this troubling in terms of the character of the neighborhood.

Mr. Michnik likes the idea of the two houses. It makes sense because it is a tough corner with regards to the view that people have, looking at the Highway Department, traffic coming in with the police officers and how that building is used, and there is an open policy for the dog catchers. The applicant may not get \$250,000 for a 2600 square foot because of the location. This was a double, going back 50 years, and continued to be a double until it was demolished.

Nick and Kelly Klemann, of 6135 Goodrich Road, voiced their concern with the size of the proposed house and asked what happened with the discussion on the single family home. Mr. Klemann asked if Mr. Sutton talked to a realtor. Mr. Sutton has talked with a realtor as part of his research but he did not bring a realtor to this meeting.

Mark Nealen, of 6112 Railroad Street, voiced his concern with the storm sewers in the area stating that they are not adequate now. He would like to see the sewers repaired before adding additional homes. He thinks the lot needs a single family home; the applicant can build a 1700-1800 square foot home and still make a reasonable profit.

Chris Simkin, of 6122 Railroad Street, noted that there is 125' lot width requirement that he is sure some thought went into when it was adopted as code. The applicant is asking for a 45% cut on the size of that lot; 55' off a 125' lot. He is not sure why this meeting is taking place because that is a huge chunk; it's like him asking to put a business in his front yard. This area is not zoned Commercial. He thinks a variance should get 5' or 10', not 55' on a 125' lot. Mr. Simkin said there are not many small lots on his street.

Kelly Simkin, of 6122 Railroad Street, said it is an historical street, families live there; they all know each other and look out for each other. She wants to keep it a single family home. If the Town thinks the buildings across the way are an eye-sore than they should put up a berm. The property is perfect for a single family home. Taking up all the green space with two properties just doesn't go.

Dave Spoth, Clarence resident, said to Mr. Sutton and his client it is all about money. For the people in the room and the Board members it is about compromising. Mr. Spoth thinks the applicant is overestimating what a house would sell for there.

Mr. Michnik referred to the comment made about putting a berm up on the Town property across the street and noted that it would be a decision made by the Town, not something the homeowner would be responsible for telling the Town to do. Mr. Michnik asked what the value of the neighbors property was when the home was sitting on this property and was in such poor condition? Was the value of the neighbor's property more? The neighbor replied no. Mr. Michnik said if something new went in there, would the surrounding property values go up? The neighbor replied yes, but not with a driveway 12' from her driveway. Mr. Michnik reminded the residents that the applicant bought this lot with the idea of building something on it. If the neighbor liked what the property looked like, perhaps they should have bought it. Mrs. Simkin said she tried to purchase it from the previous owner but it was sold to Switala's for more money. She said the house that was demolished was a single family home but the owner chopped a wall in the middle of the house to make it a duplex.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **deny** Appeal No. 2 under Old Business. The Board is asked to look at New York State Town Law §267 which provides 5 criteria for the Board to look

at when reviewing a variance request. Based on the evidence presented there will be an undesirable change in the character of the neighborhood based on the size of the parcels being so small in comparison to surrounding parcels; the frontage being smaller than the other homes and the difference in the setbacks being asked for by the applicant. The applicant can pursue other types and styles of construction to get a return on his investment. The variances are substantial. There would be an adverse physical and environmental impact on the neighborhood based upon the size of the lot requested as well as the setbacks and frontage. The record indicates that the applicant had a realtor and an attorney involved in this transaction and still left it to purchase this parcel making this a self-created hardship.

ON THE QUESTION:

Mr. Hickey said the more he looked at the request the more it became clear that this is a self-created hardship. A benefit could be achieved by some other method. He agreed that the request is a significant and substantial change to the property.

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

MOTION CARRIED.

Appeal No. 8 (from June 2012)

Rick Heavern
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 9' variance to allow for the creation of a new building lot having 141' of public road frontage at 8935 Tonawanda Creek Road.

Appeal No. 8 is in variance to §229-30(B).

DISCUSSION:

Rick Heavern is present and explained he purchased a large lot with dilapidated barns on it. He does not have the resources to further develop the land for himself, but if he could sell off one lot he could obtain enough money to demolish the barns and further develop the land for himself. He would like to build on the remaining property sometime within the next two (2) years.

Mr. Michnik asked how much road frontage the applicant has. Mr. Heavern said 441'.

Mr. Heavern received 14 signatures from the 15 surrounding properties. One property is unoccupied at this time. 12 signatures were in favor of the variance request and two (2) were not in favor of it. The signatures are on file.

Mr. Michnik asked why the applicant doesn't make the lot 150'. Mr. Heavern said he would prefer to keep 300' for himself. If for some reason he was unable to develop on that lot, he would still have enough for two (2) building lots. He has no intention to further divide the land, but this request seems prudent because there are other lots in the area that are less than 140'. If Mr. Heavern kept the frontage at 150', that would leave him with 291' which is 9' short of two (2) lots. Mr. Michnik said he is not in favor of granting this request because the applicant does have enough road frontage.

Mr. Mills asked where the two (2) neighbors are located that said no to the variance request. One neighbor is immediately next to Mr. Heavern's property. That neighbor's property is 410' and they split it into three (3) lots, the smallest being 137'. That neighbor also received a variance set way in the back making much of Mr. Heavern's land not as usable as he would like. The neighbor who resides in the front house is the other neighbor who opposed the variance request. 8875 and 8895 Tonawanda Creek Road are the addresses of the neighbors that opposed the request. Mr. Heavern purchased the parcel two (2) years ago and was aware of the frontage requirements when he purchased it. It is his plan to build one (1) residence on the property for himself. He may in the future want to parcel-off one (1) other lot. Mr. Mills asked if the applicant approached the neighbor on either side to ask if they would be willing to sell him some land so he could meet the frontage requirement. Mr. Heavern said Marsha is probably not interested in selling him 9'. The neighbor on the other side of Mr. Heavern was approached by the neighbor on the opposite side asking to buy 10' from him and he said no. Mr. Heavern did not inquire to either neighbor about purchasing land from them.

Mr. D'Amato asked if the applicant has a potential buyer for the property. Mr. Heavern said no. Mr. D'Amato suggested trying to sell the property without obtaining a variance, once he gets buyer, then he's done. Mr. Heavern does not have the intent to parcel off the remaining property but he wants to protect that option for later.

Mrs. Burkard agreed with Mr. D'Amato; she doesn't understand why the applicant doesn't sell the lot at 150' and if at a later date the applicant wishes to subdivide the remaining property he would then come before the Zoning Board of Appeals.

Marsha McCulloch said she has lived on the west side of the property in question for twelve (12) years. She said there are certain nuances about that area, it is an historic area and she has worked hard to keep it this way. This may be one of the last agricultural areas in Clarence. She would rather see a good size house on two (2) lots, rather than two (2) littler houses; it would change the appearance of the area.

Joe McCulloch said the Zoning Law is in existence for a reason. He sees no reason why the 9' should be granted, there is more than adequate frontage if the applicant wants to sell off a parcel. There doesn't seem to be justification for the variance request to be rewarded.

Mr. Michnik said the applicant could come before the board and ask for three (3) lots, each at 147' of frontage; this is a not such a big variance. If the neighbors really like the way the property is now, perhaps one of them should have bought all or part of the land. The potential buyer/owner has the option of trying to do something with it. Any house that goes in would remove a certain amount of trees.

ACTION:

Motion by Daniel Michnik to **table** Appeal No. 8, under Old Business, to allow the applicant time to think about his long term plan for this parcel.

There is no second.

Motion is lost.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **deny** Appeal No. 8, under Old Business.

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

MOTION CARRIED.

New Business**Appeal No. 1**

Michael J. Haefner
Residential Single Family

Requests the Board of Appeals approve and grant a 2' variance to allow for a 10.5' side yard setback for the construction of a new attached garage at 4855 Kraus Road.

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

DISCUSSION:

Mike Haefner is present along with his contractor Mike Ogden. Mr. Haefner explained that he is taking his existing garage and half basement and turning it into a family room, a laundry room and a bathroom; there will be a two (2) car garage on the outside of that.

Neighbor notification forms are on file.

Mr. Haefner said he will reside the whole building, not just the addition.

Mr. Mills asked if there is any other way the applicant can accomplish his goal without a variance. Mr. Haefner said if he didn't ask for the variance the garage would be too small to open the doors of the vehicles when they are pulled inside it.

Mr. Haefner has lived in the house for 14 years. The addition will be about 400 square feet. There will be a garage door in the back.

ACTION:

Motion by Daniel Michnik, seconded by Patricia Burkard, 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

Todd and Lisa Leising
Agricultural Floodzone

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

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

DISCUSSION:

Todd Leising is present and explained he wants to sit further back than many of the houses currently being built in the area. He feels this would be safer for his one (1) year old child. He also likes the wildlife that is back there. Mr. Leising owns the property.

Neighbor notification forms are on file.

Mrs. Burkard asked about the pond in the back of the property. Mr. Leising has a meeting with the Army Corp of Engineers on Wednesday July 18, 2012 to discuss filling in part of the pond because there is an issue where the pond comes on the four lots, number three (3) has no access to the back of their property. Don Wilson from Wilson Environmental said it would be able to be done; now it is just a matter of getting the Army Corp to say yes also. The pond is shallow for about 15' in. He is not concerned that his children will be in danger because of the pond; the pond is about 75' from the house. They have owned the property since March 2012.

Mr. D'Amato asked what the applicant could live with as a front yard setback. He and his wife would probably say 200' because that would put them in line with a house near his property that is setback 200'. They looked at the homes in the area that were built within the past 10 years. Mr. D'Amato pointed out that the other houses in the neighborhood have a 110' front yard setback and asked Mr. Leising if there is a compromise he would be willing to make. Mr. D'Amato said he would be more afraid for his child being near the pond, which is closer to the house, than he would be concerned about the front yard setback for the safety of the child. Mr. Leising said there is a big hole in the front yard and he is filling that in as he goes along and needs to know how far back he can go so he can continue to fill the hole in. The construction for a new house would start in 4 to 5 years.

Mr. Mills asked if this is the minimum setback that the applicant could live with. Prior to purchasing the property Mr. Leising did not research the setback requirement. He said his minimum setback would be 190'. Mr. Mills pointed out that the houses most adjacent to the parcel in question have a setback of 110'. Mr. Leising plans on building a house between 2000 and 2200 square feet. He spoke with Kathryn in the Engineering Department when discussing the fill, there is one tree that will probably not make it because of its location. Mr. Mills asked if the applicant had any concerns with looking at the back of the house to the east of his property. He has no problem with the view and he has talked to these neighbors numerous times and has been upfront with them about his plans, they have no problem with what Mr. Leising is proposing.

Mr. Michnik feels this issue is self-created because the measurement is based on a property that does not affect the applicant's property. The affected properties have a 110' setback. If he had a one (1) year old child he would want more property in his backyard. This requested setback would change the character of the neighborhood. Mr. Michnik is concerned with setting a precedent for future homes in the area.

Mr. D'Amato suggested tabling the appeal and let the applicant come back before the Board when he is closer to actually building the home. The situation could change in the next 4-5 years. Tabling the appeal will also allow time for Mr. Leising and his wife to discuss the issue further.

ACTION:

Motion by David D'Amato, seconded by Daniel Michnik, to **table** Appeal No. 2.

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

MOTION CARRIED.

Appeal No. 3

Matt Meister
Residential Single Family

Requests the Board of Appeals approve and grant:

1. a 248 square foot variance to allow a detached accessory structure 448 square feet in size.
2. a variance to have both an attached and detached accessory structure.

Both requests are to allow for the construction of a new detached accessory structure (garage) at 4233 Cameron Drive.

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

DISCUSSION:

Matt Meister is present and explained that the existing garage space is not suitable as he is looking for additional storage space; he thinks the size he is proposing will meet his needs.

Neighbor notification forms are on file.

Chairman Henning reads letter dated July 10, 2012 from David Thuman who is representing Cathrine Tetko, Paul Stahely and Jack Kirtis: "We are against the building of a 4000 square foot building on this street. With Dash's on the corner the street is busier now. We wish the person at 4233 Cameron all the luck in business, but the building is too large for a street with all ranch houses. Thanks, Cameron Dr. Residents." The letter is on file. It is noted that the proposed structure is not 4000 square feet, but 448 square feet.

Mr. Michnik noted that there is a large building on the property to the south of the applicant. Mr. Meister said that structure is the same size that he is asking for. The wooden fence from the south and north of his property is 6' in height; the chain link is 5' high. Mr. Meister has a full basement.

Mr. Mills asked what the applicant will store in the proposed structure. Mr. Meister said he will store tools in the garage. There will not be a business operating out of the proposed structure. His wife is the legal owner of the property. Mr. Meister provided detailed drawings for the Board members to view. Mr. Mills asked if the applicant could accomplish his goals with any decrease in the size of the proposal. Mr.

Meister said he added up what he wants to store and this is the measurement he needs. He will store his snowplow and his motorcycle in the structure along with the tools. He is trying not to fill up the house garage because he would like to use that for vehicle parking. The dimensions of the proposed structure are 16' x 28' with a 16' peak. The design shows an attic style truss of 4'. Mr. Meister will do the construction. According to the permit application, he will need a footer due to the square footage. The construction of the structure would be T-111 and will be painted to match the house. However, when the house is sided, the accessory structure will be sided to match the house. The neighbor's structure is T-111 also.

Mr. Meister's wife has owned the house since 2007, but it has been in the family since 1980. Mr. D'Amato said there has to be some way that is smaller than what the applicant is asking for to accommodate what he is looking to do. He will store a vehicle in the proposed structure. He has no intention of running power to the structure. Mr. D'Amato asked the applicant what the smallest dimension would be that he could live with. Mr. Meister explained that he measured all the things he needs to store in that structure and that's how he came up with the request; he does not want a smaller structure.

Mrs. Burkard said she is concerned with the size of the structure given how small the backyard is. She asked how much it will cost to build the garage. Mr. Meister said approximately \$10,000. Mrs. Burkard said he could pay for storage for some items and have a driveway that goes all the way to the back. Mr. Meister sees no need for a driveway to go all the way back. The vehicle that would be stored back there will not go in and out of the garage often and a driveway just wouldn't look right.

Mr. Michnik asked if there is a reason why the applicant has not proposed the location of the structure to the south side of the property. Mr. Meister said the power to the house comes over to that side of the property; the septic system is there as well.

It is noted that the Board will need a letter from the owner of the property indicating that she agrees with whatever the request is.

Mr. Michnik suggested a 16' x 24' structure, and asked Mr. Meister if that would accommodate him. Mr. Meister said that was one of his first plans but when he measured all that he wants to store the proposed is what he came up with.

ACTION:

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

ON THE QUESTION:

Deputy Town Attorney Steve Bengart said the applicant needs to bring in a notarized letter from the current property owner stating that she is in agreement with the request on or before the building permit is issued. Daniel Michnik and Arthur Henning agreed to make this a condition of the motion.

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

MOTION FAILED.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 3 with the following amendment and condition:

- the first request regarding the size of the structure is amended to allow the maximum size to be 24' x 16'.
- written notarized notice by the land owner that she is in agreement with the variance is required and must be received prior to obtaining any permit.

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

MOTION CARRIED.

Motion by David D'Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 12, 2012, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:45 p.m.

Carolyn Delgato
Senior Clerk Typist