

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday September 13, 2011
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 Ryan Mills
David D'Amato Patricia Burkard

Zoning Board of Appeals members absent:

Daniel Michnik Robert Geiger

Town Officials present:

Director of Community Development James Callahan
Town Attorney Steven Bengart

Other interested parties present:

Marcus Romanowski Roxanne Cook
Chris Cook Dan Rohan
Julie Dacatta Rohan Eric Schuessler
Clare Rey Clayt Ertel
Frank Capodagli Joe Latona
Joseph Rey Brian Burr

Appeal No. 1

Marcus and Cindy Romanowski
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a
1' variance to allow for the extension of a driveway
2' setback from the side lot line at 8222 Golden
Oak Circle.

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

DISCUSSION:

Marcus Romanowski is present and explained he wants this variance because if there is a vehicle parked in the driveway and he tries to pull into the side-load garage with his other vehicle, it is difficult to make that turn. If there is two (2) extra feet on the border of the driveway his wife will be able to get into the driveway, then they can both park in the garage.

Two (2) neighborhood notification forms are on file.

Mrs. Burkard does not see why the two (2) feet is needed. Most of the driveways in the neighborhood are like this. Mr. Romanowski said the extra two (2) feet is still on his property but it moves the driveway to

within one (1) foot of his neighbor's property. Mrs. Burkard referred to the photo in the file and said if the vehicle is not up that far, there won't be a problem. Mr. Romanowski said the trailer that is parked at the tip of the driveway is stored there most of the summer, so a vehicle cannot be pulled up further. If a concrete pad is added to accommodate the trailer, it will still be tight especially in the winter time with the snow that piles up. Mrs. Burkard voiced her concern regarding setting a precedent in the neighborhood.

Mr. Romanowski moved into the house in November 1999. Mr. D'Amato asked when this become a problem. Mr. Romanowski said when they bought the larger trailer; he and his wife both have truck-type vehicles. The third garage is used for storage of lawn equipment and a motorcycle.

Mr. Mills asked what the applicant would use if the variance is approved: standard concrete or stamped concrete. Mr. Romanowski said he would do either but was planning on stamped concrete to match the sidewalk that leads to the back of the property. Mr. Mills is concerned that the concrete won't match, if this is approved he would like a condition to be set that the additional footage be a stamped colored concrete that will look like a nice edging. Mr. Romanowski said the Expedition will not fit in the straight back garage as that bay is tight. If the variance is granted Mr. Romanowski will have the work started soon.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 1 as written with the condition that the additional driveway space be composed of stamped concrete with a color of the applicant's choice.

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

MOTION CARRIED.

Appeal No. 2

Chris and Roxanne Cook
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) a 22' variance to allow for a front yard setback of 32'.
- 2.) a 3' variance to allow for a front yard setback of 32'.

Both requests apply to the construction of a new garage addition at 5018 Clearview Drive.

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

DISCUSSION:

Chris and Roxanne Cook are both present. Mr. Cook said he would like more room in the home as they are expecting an addition to the family. He wants to make the current garage a master bedroom, bathroom and mud room. By doing this they have to come out 21' for a new garage. Currently, the house is only a three (3) bedroom house and only one (1) and a half baths. There are five (5) people living in the house, he would like to bring it up to date and make it a four (4) bedroom house with two (2) and a half baths. Neighbor notification forms are on file.

Mrs. Burkard asked what is behind the house now. Mrs. Cook said it is a great room; this was an addition from a few years ago. Mrs. Burkard said she is concerned with what this will look like in the neighborhood because this would be the only structure that sticks out; she asked if the applicant looked at other options. Mrs. Cook said they did look at other options, if it was put on the other end of the house it would go through a bedroom to add a bedroom, this would not work out. Mrs. Burkard asked if the applicant looked into putting the addition on the great room, they did, and really did not like that idea. Mr. and Mrs. Cook drove around Clarence and saw other homes with this type of design, they may not be in the immediate area, but they are out there. Mrs. Cook pointed out that her neighbor has landscaping that will break up the view of this addition.

Mr. Mills said the applicant would probably save some money if they built up; they would not have to put a foundation in. Mr. Cook said that will change the look of the house; it will look like a single story residence with a "pop-up", they do not want that, they like the ranch look. Mrs. Cook said the landscaping would be re-done on the side of the proposed addition. The total square footage including the addition of three (3) years ago is 2100 square feet. Mr. Mills asked if the applicant would consider less square footage for the proposed addition, maybe take the addition back 3' or 4'. Mrs. Cook said the measurement that they came up with still allows 2 ½ cars on each side.

Chairman Henning pointed out that the Board is concerned with changing the character of the neighborhood. If this variance is approved as presented it will be the only house on the street with such a large garage coming forward.

Mr. Cook said he would be willing to change his request and come out 20' with the new addition.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 2 with the condition that it be an 18' variance to allow for a front yard setback of 28'. The second request is unnecessary and is entirely eliminated.

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

MOTION CARRIED.

Appeal No. 3

Dan Rohan
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) a 2.21 acre variance to allow for a customary agricultural use on a property consisting of 2.79 acres.
- 2.) a 160 square foot variance to allow for the construction of an accessory structure 360 square feet in size.

Both requests apply for the operation of a horse farm and construction of an associated accessory structure at 10680 Stage Road.

Appeal No. 3 is in variance to §229-47 (B) & 229-55 (H).

DISCUSSION:

Dan and Julie Rohan are present. Mr. Rohan explained that they purchased the property six (6) weeks ago. His job brought to Western New York and his wife fell in love with Clarence Center. They left a family farm in the Town of Cobleskill which was devastated by hurricane Irene and subsequent flooding. The horse fencing and the culverts were ruined. The property on Stage Road is a nice setting for two (2) horses; they do not want to start a horse farm but their 14 year old daughter is involved in the 4H and participates in horse shows and fairs. Mr. Rohan would like to bring the horses closer to home.

Five (5) neighbor notification forms are on file. Mr. Rohan discussed his request with all the neighbors and they have no issues with it.

Mr. Mills is concerned with the level of the variance. He asked the applicant if he was aware of the requirement regarding acreage for horses before he purchased the property. Mrs. Rohan said they were not fully aware of the requirements when they purchased the property, Mr. Rohan said they became aware once they started this variance process. Mr. Mills asked if the applicant could make the second request smaller in size. Mr. Rohan said the size he requested is the perfect size for two (2) stalls, 2 horses and a small storage area. Mr. Mills asked what the applicants would do if the request was denied. Mr. & Mrs. Rohan do not have another plan at this time. Mrs. Rohan said they looked at many other options but this seems to be the best option for them. Mr. Mills explained that the minimum requirement for horses in the Residential Single Family zone is five (5) acres. The variance is request is substantial. Mr. Mills asked if there is land nearby that can be purchased by the applicant to make the parcel larger. Mrs. Rohan said they couldn't purchase property but the potential to lease is there. Mr. Valby owns 4 acres next to the Rohan's parcel. Town Attorney Steve Bengart will look into the acceptance of a lease agreement to bring the parcel requirement into compliance with the law.

Mr. D'Amato suggested tabling the request to allow the Board to obtain legal opinion regarding the acceptance of a lease agreement. He said the request is substantial and would change the character of the neighborhood. Mr. D'Amato said he knows of several horse farms, he is willing to get phone numbers for the applicant if they want them.

Mrs. Rohan pointed out that there is a non-conforming parcel of land that is less than three (3) acres on Thompson Road and there were fifteen (15) horses there at one time. Town Attorney Bengart said that property is a non-conforming pre-existing use; it was originally over five (5) acres.

Mr. Callahan reads from § 229-47 (B) of the Town Code: "Customary agricultural uses within the Residential Single Family District shall be permitted only on lots that measure over five (5) acres in size."

Mrs. Rohan asked why is the limit five (5) acres. Mr. Callahan explained that the law was adopted in 2005 understanding that there were some farming operations in the Residential Zone and five (5) acres is a reasonable limit.

Mr. D'Amato said the realtor who sold the property to Mr. and Mrs. Rohan should have advised them on the horse requirements.

Mrs. Rohan asked if the board members thought having horses on this property would substantially change the look of the neighborhood. Mr. D'Amato thinks it would.

Mr. Mills said it is not just about the current neighbors, it is about future neighbors as well. Mr. D’Amato said it is also about the smell and the noise; everything about horses.

The Rohan’s have owned the horses for almost five (5) years. If there hadn’t been flooding at the current horse farm there would not be such urgency for this variance. That farm cannot be fixed this winter, so it is not an option for the horses to stay there.

Mrs. Burkard is concerned with setting a precedent in Clarence if this variance was granted.

Mr. and Mrs. Rohan are in agreement to table the request.

ACTION:

Motion by David D’Amato, seconded by Arthur Henning, to **table** Appeal No. 3, to allow the applicant to look into other options.

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

MOTION CARRIED.

There is no representative for Appeal No. 4 in attendance at this time.

Appeal No. 5

Eric Schuessler
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) a 416 square foot variance to allow for the construction of a 616 square foot detached accessory structure.
- 2.) a variance to allow for both an attached and detached garage.

Both requests apply to the construction of a detached garage at 5335 Old Goodrich Road.

Appeal No. 5 is in variance to §229-55 (H).

DISCUSSION:

Eric Schuessler is present and explained he needs the variance to put up a garage in his backyard for storage of his pop-up camper, snowmobile and other items.

Chairman Henning asked if the applicant is going to build a garage or a shed. Mr. Schuessler said it is a shed.

There are two (2) neighbor notification forms on file.

Mrs. Burkard asked for details on the shed. Mr. Schuessler said it will have a frost-protected foundation; it will have a garage door and the structure will be sided. There will be grass in front of the structure, no driveway. This is in addition to the existing shed.

Mr. D’Amato said this is a substantial size request. Mr. Schuessler has lived in the neighborhood since 1993. Mr. Mills agreed that this is a substantial request especially with already having an accessory structure on the site. He asked if the applicant could reduce the size of the structure. Mr. Schuessler thought he was under the required measurements for the size of the yard. If he puts a camper and one other piece of equipment in the proposed shed, then it’s full. He would prefer not to decrease the size of the proposed accessory structure. Mr. Mills asked for further details on the construction of the structure. Mr. Schuessler said it will most likely be a gable end doors style; two (2) overhead doors with two (2) windows on the side. It will be stick built with vinyl siding, there will be no driveway or stones leading to the structure. There will be landscaping between the structure and the pool deck. An architectural shingle roof will installed to match the existing house. Mr. Schuessler would like to get the structure up before the winter. The current shed is 200 square feet.

ACTION:

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

Patricia Burkard	Aye	David D’Amato	Nay
Ryan Mills	Nay	Arthur Henning	Aye

MOTION FAILED.

Appeal No. 6

Clayton Ertel (Realty USA)
Agricultural Floodzone

Requests the Board of Appeals approve and grant:

- 1.) a 44’ variance to allow for a building lot having 106’ of public road frontage.
- 2.) a .49 acre variance to allow for a building lot consisting of .84 acres.
- 3.) a 61’ variance to allow for a building lot having 89’ of public road frontage.
- 4.) a 560’ variance to allow for a 650’ front yard setback to a primary residence.

All requests apply for the subdivision of two (2) residential building lots and construction of a new single family residence on existing vacant property along the south side of Sesh Road (SBL #18.00-1-3.1).

Appeal No. 6 is in variance to §229-30 (B) & §229-29 (B)(1) & §229-31.Setbacks.

DISCUSSION:

Clayt Ertel is present representing the owners of the property. Clare Rey is also present, she is attempting to purchase one parcel and build a single family home on it. The parcel that Ms. Rey is interested in is the one that is requesting a 650’ setback. Mr. Ertel said this is a parcel of land that was divided some years ago with the intention of someday in the future making additional lots. The lots that were pre-approved at

that point were 100' lots. The lot to the extreme east has had some confusion with regards to what the frontage is, Mr. Ertel is currently waiting for the survey to come in. It appears that the frontage of this lot is between 89' and 91'. If the lots cannot be accommodated with a variance, nothing else can be done with them.

Mrs. Burkard asked if there will be a problem with a septic system. Mr. Ertel said that is more a question having to do with the length and acreage of the lot, not the frontage.

Two (2) neighbor notification forms are on file.

Mr. D'Amato referred to a photo of the property and the surrounding area. Mr. Burr is present and owns the property that is directly in the center of the property in question. Mr. Capodagli is also present; he owns property directly to the east.

Mr. Callahan pointed out that once the first lot is split off, it automatically creates that second lot.

Kit Burr owns the parcel. There is a pending contract for sale for all the lots. Mr. Burr has owned the property for at least 40-50 years.

Mr. Mills asked if there is any other way to get the required frontage without the variance. Mr. Ertel said no, there are existing developed properties on either side and neither party is interested in selling. Mr. Mills asked if the clients could come closer to the road; the setback variance is substantial. Mr. Ertel said they haven't determined that, they wanted to make sure they went back far enough to make the impact negligible, if at all, to anyone.

Chairman Henning asked what the applicant would do if the variance was denied, is there another option? Mr. Ertel said there is not another option because the properties would not be saleable at that point.

Joe Latona, Ms. Rey's father, lives in Clarence Center and pointed out that there is some flexibility for the setback; the house could be moved forward.

Frank Capodagli, of 9085 Sesh Road, was originally concerned with drainage in the area, but with the location of the house going back 650' he is in agreement with the request. A 400' setback would concern him. The land that is between him and the property in question is several feet below road level and is wet most of the year. If a driveway is installed there will be pools of water on either side that will sit stagnant all year. He hopes that a provision can be made so this water problem won't exist. Town Attorney Steve Bengart said the Building and Engineering departments will have to look at drainage issues anyway. Mr. Ertel noted that no matter what the setback, 500' or 650', the applicant must submit a drainage plan to the Engineering department; building the home cannot make drainage worse for the surrounding properties. Many times drainage will be improved based on what is done at the site. Mr. Rey said he does not want to build anything next to Mr. Capodagli's barn. A setback of 625' is acceptable to Mr. Capodagli. Mr. Ertel said the size of the house would be between 1500 and 2000 square feet.

Mr. Mills asked if the property can be sold as one parcel. Mr. Ertel said yes but it wouldn't make sense for someone to buy it given the frontage; it would destroy the value of the property and create a significant hardship for the owner.

There is further discussion regarding the barn that is on the property, if the variance is granted the barn will be on parcel of property with no primary residence. That parcel would never be a buildable lot if this

variance is granted. Brian Burr, of 9065 Sesh Road, phoned the owner of that lot and confirmed a variance will never be requested for that lot, nor will it ever be sold. Thus, requests number 1 and 2 are removed from the agenda.

If the house is moved to the west, a 500' setback is ok with Mr. Capodagli.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 6 as follows:

- request number 3 as written.
- request number 4 as written with the following conditions:
 - neither the applicant nor any future owners will come back in front of the Zoning Board of Appeals for any other variance requests and acknowledge, by way of their agent, that the parcel located between 9035 Sesh Road and 9065 Sesh Road is a non-conforming building lot and will stay that way and no other variances will ever be requested pertaining to that parcel.
 - the front yard setback be between 500' and 650'. No closer to the road than 500'; no farther from the road than 650'.
 - the home will be positioned no closer than 125' from the east lot line of the parcel.
 - the driveway is to be as close to the center of the frontage portion of the lot on Sesh Road as reasonably possible.
 - everything is conditioned on Building and Engineering drainage review and approvals.

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

MOTION CARRIED.

Appeal No. 4

Innovision LED Displays/Frank Lazarus
Major Arterial

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow for constant animation within an LED display board sign.
- 2.) a 43 square foot variance to allow for an LED display board 64 square feet in size.

Both requests apply to the installation of an LED display board at 4545 Transit Road (Eastern Hills Mall).

Appeal No. 4 is in variance to §181-2 (C) (5) & §181-3 (A) (2).

DISCUSSION:

There is no representative for Agenda Item Number 4 in attendance.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **table** Appeal No. 4.

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

MOTION CARRIED.

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** the minutes of the meeting held on August 9, 2011, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:50 pm.

Carolyn Delgato
Senior Clerk Typist