

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday May 10, 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	Vice-Chairman Daniel Michnik
Ryan Mills	David D'Amato
Robert Geiger	Patricia Burkard

Town Officials present:

Director of Community Development James Callahan  
Town Attorney Steven Bengart

Other interested parties present:

Leslie Ives	Larry Ives
David Audino	Ethel Fopeano
Jerry Fopeano	Noel Dill
Richard Letzelter	Bernard Kolber
Orazio Ippolito	Paul Fadali
Marion Seggio	Shandra Holt

**New Business**

**Appeal No. 1**

Stephen Development/Noel Dill  
Residential Single Family

Requests the Board of Appeals approve and grant four (4) variances consisting of an 18.2' variance each to allow for the creation of four (4) building lots having 106.8' of public road frontage spanning between 4905 and 4915 Kraus Road.

Appeal No. 1 is in variance to § 229-50 (A).

**DISCUSSION:**

Noel Dill with Stephen Development is present. He explained that an application for a minor subdivision was submitted to the Planning Board but was denied because the project does not meet the required 125' of frontage. Mr. Dill referred to a document entitled lot width display prepared by Metzger Civil Engineering dated April 15, 2011. Mr. Dill explained the lots would be 1.56 acres each with frontage at 106.8' (each). The document also provides frontages of the surrounding properties on Kraus Road for each of the existing homes. The relief that the applicant is looking for is small in comparison to what the overall code calls for and is more in character with the surrounding neighborhood than the 125' that is required by Code. Of the 30 lots shown on the document less than 1 in 6 lots conforms with the code. The project will not have an adverse impact on the neighborhood and will improve the two (2) lots that

have existing homes on them. The plan is to build a 2,000 square foot home with a two (2) car garage; this fits the character of the neighborhood. The setbacks for the homes would be similar to those in the surrounding community.

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

Mr. Geiger asked why the applicant is proposing four (4) lots instead of three (3). Mr. Dill said the project with four (4) lots would require assembly of the frontage from two (2) existing homes. The cost of acquiring the homes and demolishing them is cost prohibitive. Financially, it makes better sense to ask for a variance that would allow four (4) lots. If there were three (3) lots, the cost per lot would require much larger homes that would not fit the character of the neighborhood. If only three (3) lots were allowed it would be a financial hardship. The homes will not be trailers or mobile homes. The property has already been purchased by the applicant. It was a recent purchase; the applicant was aware of the 125' frontage requirement when he purchased the property. The house on the south portion of the property is a rental; it is currently empty.

Mr. D'Amato asked for clarification on the house on the north end of the property. Mr. Dill said that house is a rental.

Mr. Mills asked for details on the construction of the proposed homes and asked if Mr. Dill could make the commitment that it will not be panelized construction. Mr. Dill said they have not finalized anything but they are looking at a single family home that is marketable at approximately \$200,000; this will not be a trailer court. Mr. Mills said Mr. Dill is asking for a very precise variance, but is only providing vague and ambiguous details. Mr. Dill does not know the means and methods of construction for the homes but they will meet the State and Town Building Codes; the homes will be energy efficient. Mr. Dill said the two (2) existing homes are definitely going to be demolished prior to any construction of the four (4) new homes.

Mr. Dill said Paul Stephens of Stephen Development wants to build the homes and sell them individually. Mr. Michnik asked if the applicant would be amenable to tabling the request and provide floor plans for the proposed homes. Mr. Dill said he would be comfortable making the stipulation that the homes would be three (3) or four (4) bedroom, two (2) story homes with two (2) car attached garages. Mr. Michnik does not want the homes to be built far back on the property as that would encroach on the privacy of the current residents. Mr. Dill understands that there will be a calculation of the surrounding area and that will become the frontage for these proposed homes. Mr. Michnik asked if basements can be dug for the homes. Mr. Dill said the existing home on the north end of the property has a basement.

John Fopeano of 4895 Kraus Road has no problem with the request.

Another resident asked for details on the footprint of the house. Mr. Dill said the frontage of the home will be the same or smaller than the neighbor's next to it.

Larry Ives, of 4920 Kraus Road, asked if the project will go forward if the variance request for four (4) lots is denied. Mr. Dill said if there are only three (3) lots to distribute the cost, the project really isn't practical because the cost of the land becomes so much along with the demolition of the homes. If the variance is denied Mr. Dill does not plan on bringing a project back to the Planning Board with three (3) lots.

A resident said the neighborhood has not changed in 50 years, he is not looking to have construction across the street from his house nor is he looking for anything to change. If something is going to happen he would like to know exactly what it will be, if the Board is going to allow a variance he would like restrictions placed on the variance. He would like to know if the driveways are going to drain into his yard. Mr. Michnik explained that the property will be checked for proper drainage via the Engineering Department. Mr. Michnik also explained that this project may help the existing drainage issue in the resident's backyard. The resident said he can live with the current drainage. The resident said the reason the house on the north side of the property has a basement is because it is raised up.

David Audino said the project should conform to the new frontage that is part of the Town's Master Plan for more appropriate growth; this needs to be taken into account. The building footprint is vague. If the Board approves the variance, what will stop the applicant from building a 3,000 square foot house? There should be more definite plans for the homes. He wants it done so the neighborhood isn't affected. Mr. Audino is also concerned with blasting. He is also worried about water run-off.

Another resident voiced her concern saying she doesn't know who would want to buy a \$200,000 house with such small frontage; she does not see the marketability of the street.

Mr. Dill said he would agree to stipulate that the properties would not be used as rentals.

Mr. Geiger noted that there was an undetermined pollution problem years ago at the end of this street. He asked if this was something that went through the neighborhood, Mr. Dill said no. There was a lot of testing done in the area, but no issues were found.

Mr. D'Amato asked the neighbors what size their homes are. The sizes ranged from 1800 to 2400 square feet.

A resident voiced his concern that his taxes will go through the roof if larger homes are built across the street.

#### **ACTION:**

Motion by Ryan Mills, seconded by David D'Amato, to **table** Appeal No. 1 as it is a substantial request. More information is needed concerning elevations and floor plans. Mr. Mills suggested a concept plan drawing as to what is going to be on the lots, he wants to see something more definitive; provide the nature of construction.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 2**

Orazio Ippolito  
Commercial

Requests the Board of Appeals approve and grant a 3' variance to allow for the construction of a new monument ground sign 15' in height at 9415 Main Street.

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

**DISCUSSION:**

Paul Fadali of NAS Sign Company and Orazio Ippolito, owner of the business, are both present. Mr. Ippolito said he wants to install a new sign. The current sign is blocked by vehicles that park next to it and by vehicles that park up to three (3) spaces over. Mr. Fadali said most of the vehicles in the parking lot are SUV or family type vehicles. Mr. Ippolito would like to have the sign visible to encourage impulse buying, there is a banquet facility, there are happy hours and specials he would like to advertise. There is also a dip in the road where Mr. Ippolito's property sits. Mr. Ippolito said he is having problems with the current sign. It seems that when it rains the lights in the sign short out. He had the sign serviced but it is old and rotted, it was suggested he invest in a new sign. The letters on the sign blow away with the wind; he would like to be able to control the sign via a computer.

Mr. Mills asked the applicant what his plan is if this request is denied. Mr. Ippolito said the sign will cost approximately \$30,000. Mr. Mills asked if the LED portion could go on the top of the sign. Mr. Ippolito said he tried that and it looks terrible, he does not want anything tacky. Mr. Mills suggested moving the sign further down. Mr. Ippolito said they thought about putting it in either one of the islands, but both islands have a telephone pole in the center making it impossible to put a sign there.

Mr. Mills referred to the NAS Sign Company drawing dated April 6, 2011, the overall height of the sign is 14.67', but it does not break down the height differential between the top of the peak and the top of the sign, he asked what that measurement is. Mr. Fadali said it will be approximately one foot. Mr. Mills said if the applicant eliminated the peak of the proposed sign, the variance would only be 2' and the objective would still be met. Mr. Ippolito said he is ok with this suggestion. Landscaping will be done around the sign. The frequency rate for the LED sign allows a change every 30 seconds; the messages must be stable and have no movement. The rectangle piece of the sign that is located beneath the triangle piece is about six inches (6") in height.

Mr. Fadali asked at what reference the Board prefers him to measure the sign by, as there is a grading slope at the location of the sign. Mr. Michnik said the applicant should use the average grade for the measurements. The drawings are based on the front post (closer to the sidewalk) of the sign which is based in the asphalt.

**ACTION:**

Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** Appeal No. 2 at a 2' variance not 3' as originally requested. The height of the sign will be 14' maximum and the top of the sign will be flat, there will be no peak. The top of the sign can be tapered to allow snow or rain to roll off the sign.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 3**

Marion Seggio  
Residential Single Family

Requests the Board of Appeals approve and grant an 80 square foot variance to allow for the construction of a new 280 square foot accessory structure (shed) at 5131 Brookhaven Drive.

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

**DISCUSSION:**

Marion Seggio is present and explained he purchased the home in the Fall of 2010. His garage is filled with no room for vehicles. There is an existing shed in the back of the property but it is small. The plan is to construct a new shed at the end of the driveway to accommodate a lawn mower, a snow blower and other maintenance equipment. The proposed structure is large enough to accommodate a vehicle in the future.

Mr. Mills asked for details on the architectural style of the shed. Mr. Seggio said he has not reached that level yet as he wanted to determine the size then figure the costs. He wants the shed to look like and match the home. Mr. Mills asked if the applicant would have a problem using brick on the front of the structure to match the house. Mr. Seggio said he thought about using brick but it would be cost dependent. Mr. Mills asked the applicant if he would be amenable to a condition of using 50% brick on the structure. Mr. Seggio said he would accept that as a condition if the size of the structure was approved. He is not planning on taking the existing shed down; he will clean it up and paint it.

Two (2) neighbor notification forms are on file; however one neighbor would not sign the form. There is a similar structure, to the one that is being proposed, in the neighborhood.

**ACTION:**

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 3 with the condition that the front of the structure will be 50% brick.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 4**

Stephen Holt/Tommaso Briatico Architects  
Residential Single Family

Requests the Board of Appeals approve and grant a 3.5' variance to allow for a 9' side yard setback for the construction of an addition to an existing residence at 8533 Howard Drive.

Appeal No. 4 is in variance to § 229-52 (4) (b).

**DISCUSSION:**

Shandra Holt, owner of the house, is present. Tommaso Briatico, architect, is present as well. Mr. Briatico explained the applicant has lived in the house for 21 years. They want to make the house work better for them. They want to live in the house for the next 30 years so they want to add a formal dining room and expand the existing family room. The addition is approximately 320 square feet and would not be a detriment to the neighbors. It would be a seamless addition and would blend in with the house using the same type of windows, siding and roofing. The neighbors talked with Shandra and said they were supportive of the addition and if their signatures were required they would provide them; there is no controversy.

Mr. Michnik said he preferred to see the neighbor notification forms on file prior to making a decision as he feels this is a substantial request especially for the neighbor to the east of the property. Mr. Mills shares Mr. Michnik's concern and wishes to see written documentation from the neighbor. Mr. Briatico said he can obtain that written documentation. Mr. Mills asked if it would impact the time table for the project if the Board tabled the request until the June meeting. Mr. Briatico asked if the Board could give the applicant a conditional approval and the documentation can be obtained and provided to the Planning and Zoning office tomorrow. Mr. Mills said that is not something the Board typically does. Town Attorney Steven Bengart said the Board could approve the request with a condition to obtain the neighbor notification form; however it is not the normal course of action.

Mrs. Holt said the total square footage of the home is just over 1800 square feet. Mr. Mills referred to the proposed first floor plan dated April 20, 2011 and labeled A-2. The exterior of the addition will be vinyl. Mr. Mills asked if the applicant contemplated alternative plans that would not require a side yard variance, perhaps going back in the southern direction. Mr. Briatico said the addition should be adjacent to the kitchen. They did not want to go towards the south of the house because there is a shallow roof there that would be difficult to work with. The approximate cost for the project would be \$150 per square foot.

Mr. D'Amato asked what the time frame is on the project. Mr. Briatico said as soon as possible. They are discussing the project with different contractors.

Mrs. Holt explained that the septic system is on the side of the house, but it is the opposite side of where the addition is proposed; it is on Oakwood Drive. Mr. Geiger is also concerned that there is not a neighbor notification form on file, but he is willing to proceed with a decision making sure that the decision is conditioned on receiving that notification.

The big evergreen tree on the property will be removed.

Town Attorney Steven Bengart asked the Board if they want a neighbor notification form or do they want something in writing from the neighbor saying they are not opposed to the addition. It is decided that the neighbor should put their approval or opposition in writing.

Mr. Michnik asked if a footer will be put in for the foundation. Mr. Briatico will put in a footer to hold the first floor; there will be no basement in the addition.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4 with the condition that the neighbor to the east approve of this project and the applicant provide proof, i.e. a statement from the neighbor in writing that they approve of the project be provided to the Planning and Zoning Department within seven (7) business days of this date.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by David D'Amato, seconded by Arthur Henning, to **approve** the minutes of the meeting held on April 12, 2011, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 8:35 p.m.

Carolyn Delgato  
Senior Clerk Typist