

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday July 13, 2010  
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  
Councilman Bernard Kolber

Other interested parties present:

Ron Grimm	Paul Stratta
Wendy Salvati	Tom Miller
David Kruse	Mark Hughes
Mary Beth Kiesel	Margaret Kiesel
Molly Kiesel	Roger W. Pryn
David C. Reed	John Semanski
Tom Keller	Russ Sciolino

**Old Business**

**Appeal No. 2**

Ronald Grimm Jr  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant an LED (electrical reader board) sign at 8855 Main Street for Passport Wine & Spirits.

Appeal No. 2 is in variance to § 181-3(D)(5) Signs.

**DISCUSSION:**

Chairman Henning explained that this appeal was tabled at the last meeting because more information was requested of the applicant. This information included the intensity of the sign and the color and actual image of the proposed sign.

Mr. Grimm, applicant, and Mr. Stratta of NAS Sign Company are present. Mr. Grimm has provided two (2) images of the proposed sign for the Board members to view. He is looking for a high-class static display, not a rolling or "fireworks" display. The cost of this sign is over \$25,000, he has to do this for his business. His main competitor spends millions of dollars in advertising; he needs this sign for his business to survive.

Mr. Stratta explained that the sign is the same technology as the sign that is used at the NOCO station at Shimerville Road and Main Street. The proposed sign is LED bulbs and is very energy efficient. Mr. Stratta is not proposing scrolling or animation on the sign. Jim Callahan noted that Clarence's code requires a 30 second hold on LED signs. Mr. Stratta said the sign would comply with the code.

Mr. Mills asked if the sign's height could be compromised. Mr. Grimm said no and pointed out that the height of the sign is only 29"; he has to have two (2) lines. Mr. Stratta has done other LED signs in Clarence. Mr. Mills asked if the number of bulbs per side for the proposed sign is similar to the NOCO sign. Mr. Stratta explained that this sign is much larger in size; the bulbs will be closer together so there is a higher resolution. There is no more lumin output than a plastic sign would have. The sign lights will be on 24 hours. Mr. Grimm said he may have 4 or 5 weekly specials that would be advertised on the sign along with community announcements if appropriate.

Mr. Stratta said the size of the sign is 29" by 110". The existing stonework on the sign will remain.

Mr., Geiger asked what the percentage of walk-in traffic versus drive-in traffic is, Mr. Grimm said about 5-10% would be walk-in traffic and 90% is drive-in.

Mr. Stratta explained that the sign has a computer in it and will be controlled from Mr. Grimm's office. Mr. Grimm does not intend to display the time and temperature.

Mr. Callahan said a similar sign set-up would be allowed in a Commercial or Major Arterial zone.

Mr. Stratta emphasized the point that this sign will not flash, scroll, move or drop. It is just an image that will change to the next image after the allotted time.

Mr. Michnik asked if it would be acceptable to the applicant if there was a condition set on the amount of time the message holds. Mr. Grimm said he is willing to compromise this issue. Mr. Michnik said if the sign is more permanent in display it will be friendlier to the neighborhood.

Mr. Grimm said his store consists of 10,000 square feet. Currently his business is not profitable.

Wendy Salvati, Vice-Chairperson of the Planning Board, provided some background on what the Planning Board went through when developing the Sign Law. Knowing that LED signs are new technology, there were many requests for such signs, it was decided that that LED signs would be allowed in Commercial, Major Arterial and Industrial Districts. The reason it was decided not to allow LED signs in the Traditional Neighborhood District (TND) is a character issue. The Planning Board felt that an LED sign would not be in keeping with the community character of the TND.

Mr. Grimm asked if the NOCO station is in the TND. Mr. Callahan said it is. Mr. Grimm will use four (4) or five (5) colors on the sign.

Mr. Mills asked if the dry stacked stone could be run up each side of the sign and if this would be acceptable to the applicant as a condition of approval. Mr. Grimm said Joe Dash built and owns the sign. Mr. Stratta explained that on the short sides of the sign are ventilation areas. The vents are approximately 3' x 1.5' in size.

Mr. Michnik does not want to set a precedent for the area but he wants to make sure Clarence businesses succeed.

Mr. Geiger referred to the Town Code which states a walkable pedestrian friendly environment is encouraged and said this area is like a Commercial island in the middle of a traditional neighborhood.

**ACTION:**

Motion by Robert Geiger to **approve** Appeal No. 2 under Old Business. There is no second.

MOTION FAILED.

Motion by Arthur Henning, seconded by David D’Amato, to **deny** Appeal No. 2 under Old Business as the variance would have an adverse impact on the physical or environmental conditions of the neighborhood.

**ON THE QUESTION:**

Mr. Mills said he would consider tabling this agenda item until the Town Attorney could be present to discuss other mitigation measures to make the sign fit into the character of the neighborhood. Mr. Michnik agreed.

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

MOTION FAILED.

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 2 under Old Business to allow time for the Board to confer with the Town Attorney and conduct further research.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

Thomas Miller  
Residential Single-Family

Requests the Board of Appeals approve and grant a 95 square foot variance to allow for the construction of a 295 square foot shed at 10380 Bergtold Road.

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

**DISCUSSION:**

Thomas Miller is present and explained he needs a shed for general storage; the building materials will match the house.

Two (2) neighbor notification forms are file.

The shed will store lawn furniture, a tractor and other lawn maintenance equipment. There is a porch included in the square footage of the shed, if there was no porch the shed may have met the 200' square foot requirement. The porch will be functional.

Mr. Miller contacted Brother of Mercy in an effort to purchase adjacent land so he would not need a variance but they were not interested.

There will be 13' from the shed to the lot line.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 1, as written.

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

MOTION CARRIED.

**Appeal No. 2**

Scott Hughes  
Residential Single-Family

Requests the Board of Appeals approve and grant a 200 square foot variance to allow for a 400 square foot accessory structure at 4510 Greenbrier Road.

Appeal No. 2 is in variance to § 229-55 (H) Accessory Structures.

**DISCUSSION:**

Mark Hughes is Scott Hughes' brother. Mark Hughes is representing Scott Hughes as he is on vacation. Mr. Hughes explained the accessory structure will be used for storage; there will be no electric in it. There will be a 4" poured concrete floor. There will be no driveway leading to the shed and it will not be used for vehicle storage.

Mr. Michnik said it seems like a large shed for such a narrow piece of property. He asked if the applicant considered moving the shed out where the blacktop driveway is. Mr. Hughes said his brother chose this location for the shed because this is the side of the yard that he actually uses. There will be no windows in the structure. If the request was denied, Mr. Hughes does not know if his brother could work with a smaller shed. His brother told him he went with the smallest size he could work with; anything smaller would be a hardship. Mr. Hughes said the residence is approximately 2400 square feet. The siding will match the house. The height of the proposed garage is 15'. Mr. Hughes does not know of any similar

sized structures in the neighborhood. His brother talked to a few of the neighbors and they did not have a problem with his proposal.

Two (2) neighbor notification forms are on file.

Mr. Mills noted that the northern portion of the residence is 25.3' wide and the proposed accessory structure is 20' wide.

### **ACTION:**

Motion by Daniel Michnik, seconded by Robert Geiger, to **table** Appeal No. 2, until the homeowner can be present at the meeting.

### **ON THE QUESTION:**

Mr. Mills has reservations about the size of the structure and would like a more comprehensive conversation as to the additional size.

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

MOTION CARRIED.

### **Appeal No. 3**

Mary Beth Kiesel  
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow for both an attached and detached garage.
- 2.) a 273 square foot variance to allow for an accessory structure greater than 200 square feet.

Both requests apply to 5105 Harris Hill Road.

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

### **DISCUSSION:**

Mary Beth Kiesel is present and clarified that the structure is a two-family residence. She explained that she wants to put a garage and a driveway to the street to provide more privacy for the renters. She will also be using the proposed structure for storage. The size of the structure will be 21.5' by 22' and the driveway will be 3' off the lot line.

Neighbor notification forms are on file.

The accessory structure will be 6' off the south side of the building. Ms. Kiesel has owned the property of 15 years. The proposed driveway is 114' back, 11' wide at the bottom, 21.5' at the building down about 40' with a kick-out. The driveway materials will cost approximately \$5,000; the cement job will be \$3,000-\$7,000. She is not doing this to make money. The building materials will match the house. The

proposed structure could not be attached because it would have been where all the meters for the house are. If the structure was put there, the meters would have to be moved, then the kitchen would have to be rearranged to put a door in to gain access to the garage from the kitchen. Ms. Kiesel did not want to do this. There will be power in the accessory structure but no water. She may contract the jobs out individually.

Ms. Kiesel thought the roof line of the garage should be angled the same as the house. She is ready to start construction as soon as possible; she hopes it will be done before winter.

**ACTION:**

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 3, as written with the following condition:

-the applicant is to contact the Erie County Highway Department and allow them to review and approve the proposed driveway access off Harris Hill Road.

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

MOTION CARRIED.

**Appeal No. 4**

Roger Prynne  
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow for both an attached and detached garage.
- 2.) a variance to allow for an accessory structure within the front yard space of a principal residence.
- 3.) a 175 square foot variance to allow for a 375 square foot accessory structure.
- 4.) a 5.5' variance to allow for a 7' side yard setback to a front yard accessory use
- 5.) a 27' variance to allow for a 23' front yard setback to a front yard accessory use.

All requests apply to 8958 Gaskin Road.

Appeal No. 4 is in variance to § 229-55 (D), (H) Accessory Structures, § 229-52 (A) (1) Setbacks and § 229-52 (B) Setbacks.

**DISCUSSION:**

Roger Prynne is present and explained that the first request no longer applies as the attached garage has been changed into a bedroom. Request No. 1 is removed.

Neighbor notification forms are on file.

David Reed, Mr. Prynne's brother-in-law, is also present.

Mr. Pryn timer needs a garage for storage of a lawn mower, snow blower and a car. He would also like to improve the value of the home. He staked the property at 16' and at 20' off the lot line; he was sure what he which measurement he was going to ask for. He wants to construct a 16' x 24' garage. He will buy a supply kit from 84 Lumber and Ed Hamm Construction will build it. He will hire a concrete company to pour the pad.

Mr. Mills asked if Mr. Pryn timer can get away with any less size of the footprint. Mr. Pryn timer said any smaller size would look like a shed. His other garage was 24' x 20'. It has been two and a half years since he closed off the attached garage. There are five people living in the house. Mr. Pryn timer has a 100% handicapped son, changing the attached garage to a bedroom was to provide his son with more room to move around.

Mr. D'Amato said the proposed structure does not fit in the area. There is a shed in the far corner of the property; the proposed structure would hold the property maintenance equipment that can't fit in the shed along with his wife's vehicle and pool equipment. He has lived in the house since 2000. The building materials would match the existing structure. Mr. Pryn timer has two (2) vehicles; one would be stored in the garage while the other would remain outside.

Mr. Michnik suggested moving the proposed structure to a different location on the property or making it even with the side of the house.

Mr. Geiger asked if the applicant talked to an architect to see how this accessory structure could be tied into the existing building. Mr. Pryn timer said he thought about attaching the structure to the house but, per the Town, there cannot be a garage access into a bedroom. There is no sense in having an attached garage if you can't access the house through it. Another reason Mr. Pryn timer does not want an attached garage is because it would cost approximately \$30,000-\$35,000. The proposed structure would cost approximately \$12,000.

#### **ACTION:**

Motion by Robert Geiger, seconded by Ryan Mills, to **table** Appeal No. 4 to allow time for discussion on a practical way of bringing the accessory structure closer to the house.

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

Mr. Mills is not in favor of the variance request as written, but if it was changed to tie in more with the aesthetics of the neighborhood he is willing to look further at the request. Mr. Mills said the applicant needs to come back with some different scenarios for the Board members to look at. Mr. Michnik agreed with Mr. Mills.

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

**MOTION CARRIED.**

**Appeal No. 5**

John Semanski  
Major Arterial

Requests the Board of Appeals approve and grant a 1.7' foot variance to allow for a 584.3' first floor elevation for the construction of a new accessory structure at 8365 Transit Road.

Appeal No. 5 is in variance to § 107-5 (C) (1) Construction Standards.

**DISCUSSION:**

John Semanski is present. The shed has been removed from the property; the two trailers have been moved off to the side and will be removed from the property within a year. Mr. Semanski said it is critical that this new building meets the floor plain of the existing building for easy access or for using a fork lift. It is critical for the four (4) plains to be identical. Mr. Semanski is in the process of discussing the purchase of some property behind his.

Mr. Mills asked for clarification on the elevation for all the buildings on the property. Mr. Semanski said all the buildings have an elevation of 584.3' except the house. He thanked the Zoning Board Members for the work they do.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 5, as written.

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

MOTION CARRIED.

**Appeal No. 6**

Thomas B. Keller  
Residential Single-Family

Requests the Board of Appeals approve and grant a 2' variance to allow for the installation of a fence 8' in height at 4344 Shimerville Road.

Appeal No. 6 is in variance to § 101-3 (B) Fences.

**DISCUSSION:**

Thomas Keller is present and explained the request is for a fence on the rear part of the property. Mr. Keller explained that after the October Storm a few years ago the bushes were destroyed, he is also having problems with kids coming through his back yard. He thinks an 8' high fence will provide him with more privacy and a little more security. He currently does not have a fence on his property.

Neighbor notification forms are on file.

Mr. Keller would like to install a board on board fence.

Mr. Mills does not want to set a precedence by approving this 8' fence. He asked if the applicant looked at other options such as landscaping with taller bushes. Mr. Keller said even when the bushes were there the kids were running through his property. He said there is an 8' high fence between Tim Horton's and a residential lot. There is another 8' fence on Main Street between an auto place and a residential lot. Mr. Keller has lived in this house since August 2001. A 6' fence would come up to the base of the first bay of the store that is pictured in the photograph on file. Mr. Keller will still see the building with an 8' fence but he will not see the truck traffic.

Mr. Michnik asked if the applicant could build a 2' berm and put a 6' fence on top of that. Mr. Callahan said the fence needs to be 6' from average grade.

Mr. Keller will install the fence himself; his brother-in-law will help.

### **ACTION:**

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** Appeal No. 6, as written. The 8' fence is granted along the rear property line only.

### **ON THE QUESTION:**

Mr. Michnik understands the applicant's concerns and the reason he is asking for this variance.

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

MOTION CARRIED.

### **Appeal No. 7**

Russell Sciolino  
Restricted Business

Requests the Board of Appeals approve and grant a 525' variance to allow for a 600' front yard setback for the construction of a new single family residence at 8275 Transit Road.

Appeal No. 7 is in variance to § 229-79 (B) (1) Development and Design Provisions.

### **DISCUSSION:**

Russell Sciolino is present and explained that the standard front yard setback in his area is 75'. His property is 703' deep. He wants to put his house back 600' off the road.

In response to Mr. Michnik's question regarding the church property, Mr. Sciolino said the church's property is as deep as his. There is a possibility that the church could expand back further than it is now.

Mr. Sciolino would like to build a 1,840 square foot house. He owns the barn that is on the property, he uses it for storage of personal items. He has owned the parcel for just over 3 years. There is no business operating from the property. The house he plans to build would be his residence; he has no finalized plans on the house yet. He has a driveway that goes back to the accessory building. The reason for such a

large setback is that Mr. Sciolino may want to build a small office in the front of the property in the future. The office would be approximately 2,500-3,000 square feet. He owns a computer business on Main Street in Clarence. He has plans of buying the property behind his.

**ACTION:**

Motion by Arthur Henning, seconded by Robert Geiger, to **approve** Appeal No. 7, as written with the following condition(s):

-subject to the Density Floodway Building Restrictions and review and approval by the Town of Clarence Engineering Department.

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

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 8, 2010, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:55 p.m.

Carolyn A. Delgato  
Senior Clerk Typist