

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday August 10, 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
Town Attorney Steven Bengart
Planning Board Liaison Richard Bigler

Other interested parties present:

Ron Grimm	Scott Hughes
Roger W. Pryn	Paul Colucci
Jeff Lippides	Joseph Corigliano
Nancy Corigliano	Jeff Kostecky
Peter Gruenthaner	Lindsey Edbauer

Entered into attorney/client session with the Town Attorney and the Zoning Board of Appeals members at 6:50pm.

Old Business

Appeal No. 2 (from June Meeting)

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:

Mr. Grimm is present.

Chairman Henning noted that there is a letter date August 3, 2010 from Mr. Grimm in the file. There are eight statements in the letter. Chairman Henning addresses number five (5) which states: "Restrictions not allowing rolling and exploding signage would be acceptable, as my intention has always been to provide a high-quality product for the Clarence community." Mr. Grimm also agreed to have the sign at three (3) minute intervals rather than 30 seconds. He has no problem with a static sign that changes every

three (3) minutes. His letter lists the specifications of the sign; they are the highest specifications available today. It is expensive and would be clearer than the existing pylon sign.

Mr. D'Amato said he noticed a few things that could be changed at Mr. Grimm's place of business and asked if there was any way to re-locate the entrance door to the store, as it is on the side of the building. Mr. Grimm explained the positioning of the door was a requirement of the Town as they did not want the congestion of having the exits of two businesses close together. Mr. D'Amato did not see an "open" sign on the front of the building. Mr. Grimm said there is one there. Mr. D'Amato said when travelling down Main Street the cart rack completely blocks the view of the signage. The trees also block the sign. Mr. Grimm would love to have the trees removed but that issue is in conflict with another law; he has trimmed the trees as much as he can. Mr. D'Amato said currently there are four (4) huge signs on the building. He does not understand how the proposed sign will help the problems Mr. Grimm currently has. Mr. D'Amato asked if Mr. Grimm has continuous advertising in the community for his business. Mr. Grimm explained he is in the Metro Source and the Bee. Most of his advertising is in the fourth quarter. Mr. Grimm could produce a financial report that shows the increase in sales for the time he had the temporary sign up in front of his store. Mr. D'Amato asked what Mr. Grimm would do if this variance request was denied. Mr. Grimm said he is so desperate he would consider an Article 78. He has 19 years left on the lease for his business, he wanted to employ people in Clarence, he lives in Clarence and owns buildings in Clarence, he did not spend this much money to get in and get out.

Mr. Geiger voices his concern with setting a precedent for the area if this variance is granted. Mr. Grimm discussed the LED sign with Joe Dash; Mr. Dash said he has no interest in an LED sign at this time. Mr. Geiger asked the applicant to expand on the following statement: the alleged hardship is unique and does not apply to substantial portion of district or neighborhood. Mr. Grimm feels his business is a commercial property and a unique situation for his request.

Mr. Geiger asked Mr. Grimm to expand on the statement that the requested variance will not alter the essential character of the neighborhood. Mr. Grimm said the sign specifications stated in his letter indicate that it will be the same basic looking sign, just clearer. Mr. Grimm said the alleged hardship has not been self created. He would be agreeable to reasonable conditions.

Chairman Henning asked if it is possible to have just two (2) colors on the sign. Mr. Grimm said if he spends \$27,000 on a sign he doesn't think it is fair to be limited to two (2) colors. He would like to use five (5) or six (6) colors.

Mr. Michnik suggested a condition in which the LED sign was allowed to change during a few months a year; the remainder of the year it would be static. Mr. Grimm suggested limiting the message on a per day basis; the message would be allowed to change for three (3) hours out of a 24 hour period, changing the message every three (3) minutes during the three (3) hour time frame.

Town Attorney Steven Bengart noted that if conditions are set, someone needs to enforce them.

Richard Bigler voices his concern regarding the distractions the sign may cause to drivers on Main Street. With regards to a self-imposed hardship, Mr. Bigler pointed out that the applicant knew about the conditions for the front door and various other things before he signed the lease for that building. He is also concerned with setting a precedent on Main Street that the Town does not want. The Town worked long and hard on the Sign Law to avoid such circumstances. Mr. Bigler spoke on behalf of his personal capacity.

ACTION:

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** Appeal No. 2 (from the June 2010 meeting) under Old Business per discussions held at this meeting and previous meetings with the following conditions:

- The applicant is to comply with the letter dated August 3, 2010 from Passport Wine & Spirits.
- The message on the sign will remain static except for four (4) hours out of the 24 hour day. The message will hold for three (3) minutes.
- The hours allowed for the changing message are Monday-Friday 5pm-9pm, Saturday 10am-2pm and Sunday 12pm-4pm.

ON THE QUESTION:

Town Attorney Steven Bengart warns against the enforcement difficulties the conditions present and suggested setting exact times for the signage to be allowed to change.

Mr. Michnik prefers a three (3) hour window for the changing message, not four (4) hours. Mr. Grimm pointed out that he is agreeing to go from a 24 hour changing message to four (4) hours, and from 30 seconds to three (3) minutes regarding the length of time the message will hold.

Jim Callahan pointed out that this is a unique circumstance in that it is a 40,000 square foot structure in this Traditional Neighborhood District. This structure would not be allowed if it were to be built from the ground up today. Mr. Geiger and Chairman Henning agree that this unique circumstance is part of the basis for the decision.

Mr. Mills said the following is what he based his decision on:

- this is a unique parcel in size.
- there are trees that are partially restricting the signage from different angles and those trees cannot be altered by Mr. Grimm.
- Mr. Grimm did not know the impact a side door entrance would have on the financial component of his business.
- a high intensity LED sign will be utilized in a static position other than the four (4) hour time restraint set forth in the record.

Mr. Geiger and Chairman Henning agree that the above are contributing factors to the motion made.

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

MOTION CARRIED.

Appeal No. 2 (from July Meeting)

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:

Scott Hughes is present and explained that in the warmer months he is leaving his garage open and using that as a front entryway. It is 18' x 20' and he has stuff piling up on both sides of that garage. He has a pop-up camper and a jetski that needs to be stored. If he obtains approval for this variance he can store his things in it and restore the inside of the existing garage. He needs storage for the riding lawn mower and patio furniture that he needs to purchase.

Mr. Geiger asked what the height of the proposed structure is. Mr. Hughes said 15'. Mr. Geiger asked what the applicant would do if the request was denied. Mr. Hughes does not know what he would do.

Mr. Hughes has owned the property for two (2) years and has already grown out of it.

Mr. Mills asked if the applicant would be willing to compromise on the length and/or width of the proposed structure. Mr. Hughes said the garage will not be seen from the Greenbrier Road side of his property. The view from Ericson will only show the top of the structure because it is set back so far. The proposed location of the structure is dead space and is not used. He cannot compromise on the size of the structure.

Mr. Michnik asked if the applicant thought of attaching a new garage to his home. Mr. Hughes said he thought about it briefly but it would present some blind spots and will take away the country atmosphere. If he added on to the existing garage he would lose his patio space and would have to shift everything in that area of his property, he does not want to do this as it would be too costly. The house is 1700 square feet with a half basement. When he bought the house he did not think he would have a space problem. He has owned his jetski for 5 or 6 years and his pop-up camper for a long time.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **deny** Appeal No. 2 (from the July 2010 meeting) under Old Business based on the following reasons:

-Per the NY Town Code §267-b which states the Board shall consider whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. There are other feasible means the applicant can pursue like an attached structure and/or off-site storage.

-Per the NY Town Code §267-b which states the Board shall consider whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Due to the large size the applicant is requesting it will create an undesirable change in the character of the neighborhood.

-Per the NY Town Code §267-b which states the Board shall consider whether the requested area variance is substantial. When the square footage of the house is analyzed along with the square footage of the nearby properties, the requested square footage of the accessory structure is substantial.

-Per the NY Town Code §267-b which states the Board shall consider whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Because of the size of the proposed structure it would have an adverse effect on the neighborhood.

-Per the NY Town Code §267-b which states the Board shall consider whether the alleged difficulty was self-created. The applicant has only owned the house for two (2) years, he was aware of the size issue associated with the house.

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

MOTION CARRIED.

Appeal No. 4 (from July Meeting)

Roger Prynne

Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) a variance to allow for an accessory structure within the front yard space of a principal residence.
- 2.) a 175 square foot variance to allow for a 375 square foot accessory structure.
- 3.) a 5.5' variance to allow for a 7' side yard setback to a front yard accessory use
- 4.) 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:

Mr. Prynne is present and explained he would like to build an attached garage 24' out and 20' wide from his existing extra bedroom (which use to be the garage). The attached garage would be 2' closer to the house than the original proposed detached garage. The roof will be tied in to the house as a hip roof.

Mr. Callahan explained the only variance that is needed now is a front yard setback of 25'.

The window will be removed from the existing structure and 2 sheets of drywall will act as the firewall between the house and the addition. The man door accessible from the garage will be wheelchair accessible at 36" wide.

Mr. Prynne explained that all materials used will match the house except that for the siding. His house is brick but the attached garage will be vinyl siding. He can brick the front of the garage if the ZBA

members request it. There will be two (2) lights on the outside front wall of the garage and one (1) window on each side of the proposed structure.

ACTION:

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** request number 4 only for Appeal No. 4 (from the July 2010 meeting) under Old Business as a 20' variance to allow for a 25' front yard setback. Requests 1, 2 and 3 are eliminated.

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

MOTION CARRIED.

New Business

Appeal No. 1

Paul Colucci/The DiMarco Group
Major Arterial Zone

Requests the Board of Appeals approve and grant a 14' variance to allow for an 11' side yard setback for the construction of an addition to an existing automotive sales facility located at 5505 Transit Road.

Appeal No. 1 is in variance to § 229-94(E) Side Setback.

DISCUSSION:

Jeff Lippides, who is associated with the applicant, is present. Paul Colucci, Vice-President of development and construction with the DiMarco Group, developers for the project, is present as well. Mr. Colucci explained that the applicant, Auction Direct, is renovating and expanding the facility. Auction Direct has entered into a purchase and sale agreement to purchase the facility from West Herr, who formerly ran the business as a used car dealership sales and service facility. Mr. Colucci's proposal is to construct an addition on the north side of the building of approximately 6500 square feet which would put the addition within the side yard setback and within 11' of the property line, hence the 14' variance request. The site plan submitted shows circulation and the layout with the building constructed on the north side. There is a shared driveway agreement in place with West Herr. The building addition on the north side is the most cost effective and the most feasible location for the site based on the existing infrastructure of stormwater facilities on the site. The ranch house will be removed.

Mr. Geiger asked about the location of the retention pond(s) on the property. Mr. Callahan said that will be worked out through the Town Engineer and the building permit process.

Mr. Colucci explained that the applicant was before the Clarence Town Board in July 2010 seeking architectural and landscape referral. The applicant was successful in the landscape referral however the Town Board could not grant architectural approval because the area variance needed to be pursued. Auction Direct is more retail based than other auto dealerships. 80% of the service component is related to reconditioning/detailing vehicles for resale. The vehicles on display will be behind the gated area.

Mr. Callahan explained that both the buildings at the site pre-existed the Town's current Zoning Law. The old law required a 10' side yard setback which would not have required a variance in this case, but since the new law has been adopted it requires a 25' setback, thus the variance request.

Mr. Colucci said they would like to be under construction this Fall. He has done other projects in the area such as Wal-Mart on Transit Road in Lancaster and Kohl's on Transit Road. Any sign would have to go through the Sign Review Board. Most of the façade will be glass; there will be some concrete block. Most of the existing facility will remain intact. The prediction for this site is to move 300 cars a month, with the number of employees ranging from 40 to 60. The lot can hold approximately 500 cars.

West Herr was approved for renovations at their site and they will continue as a used car dealer.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 1 under New Business as written.

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

MOTION CARRIED.

Appeal No. 2

Nancy Corigliano
Agricultural Rural Residential Zone

Requests the Board of Appeals approve and grant a variance to allow for the construction of an accessory structure prior to the construction of a principal structure (residence) at 6155 Salt Road.

Appeal No. 2 is in variance to § 229-44(D) Accessory Structures.

DISCUSSION:

Joseph and Nancy Corigliano are present. Mrs. Corigliano explained they would like to put up a shed to house their children's toys, etc. The toys are presently stored in the barn with heavy equipment; their daughter was injured by one of the pieces of equipment and they would like to prevent future injuries. There is a barn currently on the property. The proposed shed would be 16' x 16' approximately 50 yards away from the barn; this would be a safe zone for the children. They would like to build the shed as soon as possible. There is no house on the property. They have owned the property for one (1) year.

Neighbor notification forms are on file.

The applicants visit the site 2-3 times a week to landscape the property. They plan to build a house on the property in 3-5 years; the house will be between 3,000-4,000 square feet in size. There would be a three car attached garage. The shed will be vinyl and is similar to the model shown on the "Duro Shed" flyer on file. There will be a loft; the total height of the shed is 16'4".

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 2 under New Business as written.

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

MOTION CARRIED.

Appeal No. 3

Jeff Kostecky
Residential Single-Family Zone

Requests the Board of Appeals approve and grant 2 variances to allow for the construction of 2 additions to the existing residence at 4259 Connection Drive:

- 1.) a 5' variance to allow for a 7.5' side yard setback for the construction of an addition to an existing garage.
- 2.) A 7.5' variance to allow for a 5' side yard setback for the construction of an addition to an existing residence.

Appeal No. 3 is in variance to § 229-52(A)(4)(b) Setbacks.

DISCUSSION:

Jeff Kostecky is present. He is withdrawing request number 2. He wants to add a bay to his garage to make it 20' wide and a depth of 24'. He would like to build the addition as soon as possible. The addition would be vinyl sided to match the home and the front façade. Currently there are two (2) sheds on the property. One shed will be moved back on the property, the other shed that is towards the rear of the property will be removed. Mr. Kostecky does not know who will be doing the work just yet. The trees on the property line will remain. He has owned the house for four (4) and a half years.

Neighbor notification forms are on file.

There will be no living space on the second floor of the proposed addition; it will be used for storage only. The pitch of the roof lines will match according to what an architect would suggest. Mr. Kostecky would like to have a dormer on the garage to match the one that is on the house. White cedar shake siding would be used. He does not think the driveway footprint needs to be expanded.

Mr. Mills voices his concern with the front elevation of the roof line over the garage. He thinks a dormer would create a nice effect there. Mr. Mills asked the applicant if it would be acceptable to him if a dormer at this location was made a condition to the motion. Mr. Kostecky agreed with this.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 3 under New Business request number 1 only. Request number 2 has been eliminated. The following condition applies:

-A dormer is to be placed on the west roof of the addition.

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

MOTION CARRIED.

Appeal No. 4

Peter J. Gruenthaner
Agricultural Rural Residential Zone

Requests the Board of Appeals approve and grant a 20' variance to allow for a 5' rear yard setback for the construction of an accessory structure at 5915 Strickler Road.

Appeal No. 4 is in variance to § 229-44(F)(3) Accessory Structures.

DISCUSSION:

Peter Gruenthaner and Lindsey Edbauer are present. Mr. Gruenthaner said he wants to hide the structure behind existing trees, he does not want to remove the trees and he does not want the structure to be an eyesore from Clarence Center Road or Strickler Road. The structure would have a 12' ceiling and would be used for hobbies such as woodworking and working on his cars. The materials for the structure would be vinyl siding and asphalt shingles; Mr. Gruenthaner wants it to blend in with the house and be visually appealing.

Mr. Mills asked if Mr. Gruenthaner would agree to a condition of landscaping on the north side of the structure if this request was granted. Mr. Gruenthaner agreed. He will eventually put in a driveway that would be parallel with the lot line and go to Strickler Road.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 4 under New Business as written with the following condition:

-Landscaping is required. 10-12 evergreens are to be planted every five feet along the side of the proposed structure.

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

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** the minutes of the meeting held on Tuesday July 13, 2010, as written.

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

MOTION CARRIED.

Meeting Adjourned 8:49 p.m.

Carolyn Delgato
Senior Clerk Typist