

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday September 8, 2009
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Board of Appeals members present:

Chairman Arthur Henning
Ryan Mills
Robert Geiger

Vice-Chairman Daniel Michnik
David D'Amato

Other Town officials present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart
Councilman Bernard Kolber
Planning Board Liaison Richard Bigler

Other interested parties present:

Stephen J. Schop
Jim Pauly
Conrad Nagel
Jim Sendker
Miriam Haefner
Diane Kaufman
Michael Kaufman
John Druar
David Russell
Joseph Dash

Susan Ballard
Jeff Pastore
Ray Valentine
Candace McCulloch
Don Ehrenreich
Annette DiPasquale
Mark Barden
Kimberly Bialous
Wendy Costanzo
Patricia Burkard

Appeal No. 1

Stephen J. Schop, Esq./Harris Beach PLLC
Major Arterial Zone

Requests the Board of Appeals approve and grant a 36.25 square foot variance to allow a 96.25 square foot replacement sign at 4135 Transit Road.

Appeal No. 1 is in variance to Section 181-4(A)(1).

DISCUSSION:

Stephen Schop, attorney with Harris Beach PLLC, is present on behalf of Toys R Us. The major arterial Transit Road was recently widened through Department of Transportation (DOT) action. The sign that was there was destroyed when the boundaries of the street were increased. The sign that was there originally was put up before there was a change in the Sign Law. The size of that sign was

considerably larger than what is being requested today. Absent the DOT action, the sign would still be there today and would be grandfathered in accordingly. The proposed sign is smaller and less intrusive than what was there; it does not have the giraffe head sticking out of it now. It will be put up at the same location as the old sign. Mr. Schop refers to drawing #16359. The new sign would be lower in height.

Mr. D'Amato said he did not see markings indicating the placement of the proposed sign when he visited the site. Mr. Schop said the architect painted a black "X" where the sign is supposed to go. Notifications were sent to all the neighbors; only one notification came back to the applicant and with no objection.

Mr. Mills asked if the internal lighting was more intense than the old sign. Mr. Schop said it is anticipated there would be no material change and will not be distracting to the commuter driving by. It will not be brighter or louder than the original. There is no external lighting. The proposed sign is a single metal pole sign.

Mr. Schop refers to a survey of Control Point Associates, Inc. dated 2-22-05, Job number CO4352. He points out the location of the sign will be the same as the original; however, it will now be on the property that is no longer into the street. There will be no reconfiguration of the physical layout of the parking.

ACTION:

Motion by Robert Geiger, seconded by Ryan Mills, to **approve** Appeal No. 1, as written.

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

MOTION CARRIED.

Appeal No. 2

Dana Hoffman/Buffalo JBR, LLC
Residential Single Family

Requests the Board of Appeals approve and grant a 45 foot variance to allow a 100 foot front yard setback for the construction of a new house at 8825 Roll Road.

Appeal No. 2 is in variance to Section 229-52(A)(3).

DISCUSSION:

Susan Ballard is present on behalf of JBR, LLC. She presents neighbor notification forms to be kept on file. Ms. Ballard explains that the house on the corner has a side yard setback of 55'; this establishes the average front yard setback for the property in question. She would like the house to be set back further which is more consistent with the homes that abut the property on Shimerville Road. There is no plan for the size of the house that would be constructed at the site but Ms. Ballard guesses it would be about 2600 square feet. Ms. Ballard had a conversation with one of the neighbors who voiced his concern regarding windows on the left side of the home for privacy reasons. She explained that rarely do they build houses with windows on the side of the homes. She advised that neighbor she will take his concerns into consideration when designing the floor plan.

Mr. Mills asked who the legal owner of the lot is. Ms. Ballard said she is not sure if the property has been transferred to Buffalo JBR; the original owner was Jack Devere. Ms. Ballard has a letter of permission from Mr. Devere to speak on his behalf because there is other property owned by Jack Devere on Roll Road. Ms. Ballard said they had a contract from Dana Hoffman to purchase the land from JBR. The contract is not contingent upon the variance approval. Likely, the construction would be done by Patrick Homes. It is possible Ms. Ballard may sell the lot.

Mr. Geiger clarifies that any decision made by the Board goes with the property and not the applicant. A further setback has certain safety aspects to it.

Ms. Ballard said the owners of the property behind this lot are working with the Town relative to an open development. Ms. Ballard feels the lots to the east of 8825 Roll Road are fairly homogenous and will have similar setbacks. Mr. Callahan said this setback would probably set the standard for those lots to the east.

ACTION:

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** Appeal No. 2, as written.

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

MOTION CARRIED.

Appeal No. 3

Jon Grande
Planned Unit Residential

Requests the Board of Appeals approve and grant a 6 ½ foot variance to allow a 3 ½ foot side yard setback for the installation of a generator at 5401 Center Pine Lane.

*Note: The generator is currently installed.

Appeal No. 3 is in variance to Section 229-55(E)(1).

DISCUSSION:

Jim Pauly is a private contractor and is representing the applicant. Mr. Pauly explains that the generator was installed; Paul Gross inspected it and said it was ok. Then the setback law changed and Mr. Pauly was advised he needed a variance.

Neighbor notification forms are on file.

Mr. Pauly explained the closer the generator is to the gas main the better it operates because of the gas pressure. Putting the generator to the back of the house would affect the output meter because it would be further away from the gas main. The generator was installed approximately one year ago. It is fully operational and has been utilized. The cost to relocate the generator would be approximately \$1,200. Mr. Michnik said there are things that can be mitigated and adjusted so that the generator could be placed in the back of the house and still be effective. Mr. Pauly said all the generators he has installed have been in the side yard.

Mr. Mills asked if the property owner expressed an opinion on the location of the generator. Mr. Pauly said the property owner does not want to put the generator next to the patio or under the dining room window, which is behind the house.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **deny** Appeal No. 3, as written, based on the fact there is ample opportunity to move the generator to the back of the property at a minimum cost.

ON THE QUESTION:

Mr. Mills refers to the aesthetics of the neighborhood and said it seems that most of the generators are in the side yard. Given the patio and pool in the back yard, Mr. Mills said he would be in favor of approving the variance.

Mr. Michnik said he thinks the generator needs to be moved to the back yard area.

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

MOTION FAILED.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 3, as written.

ON THE QUESTION:

Mr. Michnik suggests a condition be placed on the motion to require the applicant to install landscaping and concrete pylons around the generator to keep cars and snow plows from damaging it. Mr. Pauly said there is over 15' between the neighbor's driveway and the generator. Mr. D'Amato said concrete pylons will make it look commercial. Mr. Pauly said the generator housing has doors that swing open; this needs to be taken into consideration when discussing pylons. Mr. Geiger points out there is an automatic shut off for the gas line inside the generator should the generator be hit. Mr. Pauly said the automatic shut-off is a Federal safety regulation. So, in theory, if the generator was hit there would be no chance of explosion.

Mr. Mills and Chairman Henning do not amend their motion to include the condition discussed above.

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

MOTION CARRIED.

Appeal No. 4

Jeff Pastore
Planned Unit Residential

Requests the Board of Appeals approve and grant a 2 ½ foot variance to allow a 10 foot side yard setback for an addition to an existing attached garage at 5401 Via Del Sole.

Appeal No. 4 is in variance to Section 229-52(B).

DISCUSSION:

Jeff Pastore is present along with Conrad Nagel who will help Mr. Pastore with the construction of the garage. Mr. Pastore explains that the original plan was done for a 10’ side yard setback, this was the requirement at the time. Subsequently the requirement changed to 12.5’; Mr. Pastore would like to keep the original plan. He would like to start construction as soon as possible.

Two (2) neighbor notification forms are on file.

In response to Mr. Mills’ question as to the location of the existing shed, Mr. Pastore’s intent is to put it behind the proposed garage. It will be a two car garage, single overhead door, the brick work to match the house will be on the front of the garage with siding on the remainder of the structure. There will be a man door on the side and back of the garage. Two windows will be either on the side or the back. The garage will be used to store Mr. Pastore’s vehicles.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written.

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

MOTION CARRIED.

Appeal No. 5

Ray Valentine
Residential Single Family

Requests the Board of Appeals approve and grant 3 variances for the construction of a new detached garage at 4270 Shimerville Road.

- 1) Requests a 280 square foot variance to allow for a 1000 square foot detached garage.
- 2) Requests a 2 foot variance to allow for a detached garage that is 18 feet in height.
- 3) Requests a variance to allow for both an attached and detached garage.

Appeal No. 5 is in variance to 1) Section 229-55(D), 2) Section 229-55(E) (2), and 3) Section 229-55 (H).

DISCUSSION:

Ray Valentine is present. Ron Ehrenreich, Mariam Haefner and Candace McCulloch are neighbors of Mr. Valentine and are present as well. Mr. Valentine said he needs the garage for storage of his vehicles. James Sendker, friend of Mr. Valentine, said Mr. Valentine has no basement and a very small garage on the house, there is little storage space. Mr. Valentine owns a boat that is stored at Mr. Sendker's house, Mr. Valentine would like to store the boat at his own house now.

Chairman Henning notes there is a letter from Mariam Haefner, of 4258 Cameron Drive, dated September 8, 2009 which states Ms. Haefner has lived close to the applicant for 21 years and she is upset that the variance is coming before the Board. She is also upset with the junk that is in the yard. She thinks that by approving the variance request it will only add to the problematic condition of the property and the neighborhood.

Chairman Henning said there is a lot of wood on the property, there are unlicensed vehicles and some debris from a storm of 2 or 3 years ago. Mr. Valentine said there is no debris, he heats with wood and there is one unlicensed vehicle. There is a pool in the back yard. The boat that he wants to store in the garage is 25' long.

Mr. Valentine and Mr. Sendker will be constructing the proposed garage. In response to Mr. D'Amato's question regarding the materials to be used, Mr. Valentine said it will compliment the house. He will use shingles for the roof, vinyl siding, no windows, possibly dormers on the front of the structure, a man door and a garage door.

The overhead garage door would face north and will be 9' high and 10' wide. The storage shed will be removed. The wood on the property will be moved inside the garage. Mr. Valentine does not plan to have any type of driveway leading to the garage, not even a stone driveway. He will not be doing any type of repair work on the boat or the unlicensed vehicle that will be stored in the garage.

Neighbor notification forms are on file.

Don Ehrenreich reads his letter dated September 8, 2009 which is in opposition to the request. The letter is on file. He would like more answers and a change in the location and size of the proposed building.

Candace McCulloch, of 4263 Cameron Drive, submits an e-mail from Marie Neverosky, another neighbor. Chairman Henning reads the e-mail which states Ms. Neverosky thinks the proposed structure is too large for the lot and asked the Board to consider not approving the request. The e-mail is on file.

Another neighbor voices her concern regarding the size of the proposed structure, it sounds like it would be a large commercial structure which would be inappropriate to the small residential neighborhood. She is concerned with a decrease in the property value, the influx of the rodent population and the change from a quaint neighborhood to an urban commercial district.

Mr. Valentine said he does not run any business out of his home. He rarely does any repair work on his vehicles at his home.

ACTION:

Motion by David D'Amato, seconded by Arthur Henning, to **deny** Appeal No. 5, as written.

ON THE QUESTION:

Mr. Mills refers to Town Law § 267 which indicates the criteria the Zoning Board of Appeals considers when making a decision. This large building will impact the character of the neighborhood. The applicant could pursue storage space in a smaller structure. Given the parcel size and the size of the building the request is substantial. If the request was granted it would have an adverse effect based on the scale of the neighborhood and the size of the building. The situation is self-created. Mr. Michnik suggests the applicant review the criteria the Board looks at come back with a plan more feasible to the neighborhood.

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

MOTION CARRIED.

Appeal No. 6

Diane Kaufman
Residential Single Family

Requests the Board of Appeals approve and grant 2 variances for the construction of a detached garage at the southeast corner of Old Goodrich and Greiner Roads.

- 1) Requests a variance to allow more than one private garage, whether attached or detached.
- 2) Requests a 480 square foot variance to allow for a 1,200 square foot garage.

Appeal No. 6 is in variance to 1) Section 229-55(H), and 2) Section 229-55 (D).

DISCUSSION:

Diane and Michael Kaufman are present. Mark Barden, seller of the property, is present. Annette DiPasquale, real estate agent, is also present. Ms. Kaufman said they are asking for a change from the variance that was on last month's agenda. She explains they are changing the positioning of the pole barn; it will now be diagonally to the back almost at the line in which the homes are. The house has been moved to the north end by approximately 30' or 40'. The Kaufman's would rather have the garage towards the back of the house as opposed to the original plan where it was towards the front. There will be pavement going to the garage. The materials of the garage will match the house. The façade of the house will be brick or cobblestone; the rest of the house would be sided and the front of the garage would be sided accordingly. The garage roof would be the same as the house.

Mr. Mills reads from the August 11, 2009 Zoning Board of Appeals minutes as reference to the Kaufman's previous variance request: "Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** Appeal No. 6 as written, with the stipulation that 100' of the property on the north side be left undisturbed to the greatest extent possible. Reasonable shrubbery is required to protect the view of the

barn from the neighbors to the south. The pole barn and the house will be moved closer to Greiner Road by 50' maximum per the applicant's request." Mr. Mills asked if these same conditions apply now. Mr. Callahan said losing 100' of their property was the concern. Ms. DiPasquale said the Kaufman's are in the process of buying all three (3) lots; the variance will be the deal maker or breaker. If 100' greenspace is required why would the Kaufman's buy the third lot if they can't ever use it? Mr. Kaufman said his intent is to leave the 100' greenspace anyway, but if he wants to cut down a tree or build a club house for his son in that area, he wants to be able to do it. He does not want any stipulation put on the property that he owns. Mr. Kaufman said he would never sell any portion of the three (3) lots; they will be joined together to make one lot. Town Attorney Steven Bengart asked the Kaufman's if they agree to the reasonable landscaping condition set forth at the August 2009 meeting. They agreed. The Kaufman's said they may not combine the lots until they are ready to build the house, this may take up to two (2) years.

Mr. Mills voices his concern with the possibility of a third lot being sold in the future. He suggests a condition be set on the variance that states the third lot not be a buildable lot; this would be a deed restriction. Mr. Mills would then be amenable to this layout.

Town Attorney Steve Bengart explains that once the three (3) lots are combined to form one (1), any future split of the parcel would have to go before the Town Board. A condition of the variance will be to combine the three (3) lots into one (1). The Kaufman's said they do not have a problem with this condition.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 6, as written, with the following conditions:

- Reasonable shrubbery is required to protect the view of the barn from the neighbors to the south along the property line.
- All three (3) parcels emerge into one (1) parcel; one (1) tax ID number, prior to a building permit being issued.

ON THE QUESTION:

It is clarified that the approval is for the most recent application submitted, dated August 25, 2009. The application is on file.

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

MOTION CARRIED.

Appeal No. 7

John Druar
Planned Unit Residential

Requests the Board of Appeals approve and grant 2 variances for the construction of an accessory structure (storage shed) at 9361 Pine Breeze Lane.

- 1) Requests a 6 inch variance to allow for a 9 ½ foot side yard setback to an accessory structure.
- 2) Requests a 3 foot variance to allow a 3 foot setback for an accessory structure to a principal structure.

Appeal No. 7 is in variance to 1) Section 229-55(E)(1), and 2) Section 229-55 (E)(1).

DISCUSSION:

Mr. Druar is present. He staked the property and took pictures of the stakes; he then removed the stakes as he misunderstood that they needed to remain on the property for all Zoning Board of Appeals members to view. The photos are on file. Mr. Druar explained he needs the shed for property maintenance equipment and bikes.

Neighbor notification forms are on file.

Mr. D’Amato asked if placing the shed in the back corner of the property is an option. Mr. Druar said he chose this location because he would like to have easier access to his snow blower and shovels during the winter months.

The shed will have vinyl siding, three windows with flower boxes and look similar to the house. Mr. Mills said most sheds in the neighborhood are in the rear yard, there is an occasional shed in the front yard.

Mr. Druar said the fire code requires six feet (6’) between the shed and the permanent structure, anything closer than that requires a fire board to be installed; Mr. Druar will comply.

ACTION:

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** Appeal No. 7, as written.

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

MOTION CARRIED.

Appeal No. 8

Kimberly Bialous
Residential Single Family

Requests the Board of Appeals approve and grant a 4 foot, 1 inch variance for an 8 foot 5 inch side yard setback for the construction of an addition to an existing garage at 8787 Fairbrook Court.

Appeal No. 8 is in variance to Section 229-52 (4)(b).

DISCUSSION:

Kimberly and James Bialous are present. Mrs. Bialous explained they need storage room. They recently had an in-ground pool installed and the side of the house was used to access the pool site, this is where they would like to put the garage. No construction has started yet although the land has been cleared in conjunction with the installation of the pool.

Neighbor notification forms are on file.

The building materials will match the vinyl siding of the house. The addition will have a single overhead garage door. There will be no man door. They plan on saving the maple tree they dug out of the front and planting it around the curve of the driveway; they will add some boulders in this area as well, for aesthetic reasons.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 8, as written.

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

MOTION CARRIED.

Appeal No. 9

David Russell
Residential Single Family

Requests the Board of Appeals approve and grant 2 variances for the construction of a detached garage at 6471 Goodrich Road.

- 1) Requests a 480 square foot variance to allow a 1,200 square foot detached accessory structure (garage).
- 2) Requests a variance to allow more than one private garage, whether attached or detached.

Appeal No. 9 is in variance to 1) Section 229-55 (D), and 2) Section 229-55 (H).

DISCUSSION:

David Russell is present and explained he needs a place to store the 2 racecars and one muscle car that he owns; this will also provide a place for him to work on the vehicles. He can store his enclosed trailer inside the garage.

Neighbor notification forms are on file.

Mr. Russell does not know the exact height of the garage but said he will comply with the code; which allows 16'. There will be a standard garage door on the front of the addition. The materials will match the house and there will be landscaping around the addition. He would like to extend the existing

driveway off the side of his garage to a car and a half because it gets wet back in that area. Mr. Mills asked if the applicant explored having an attached garage run the depth of the yard. Mr. Russell said he looked into it and it would be much more expensive. He cannot down-size the proposed garage if he wants to fit his trailer in it and that is the main objective. Mr. Mills asked if a one car garage would benefit him. Mr. Russell said it would not be worth it to have a garage that fits only one car as he has three cars he needs to store; a two car garage wouldn't benefit much either. Mr. Mills asked if the applicant is receptive to the condition of Landscape Committee approval. Mr. Russell agrees.

Mr. Russell's vehicles are currently stored in his garage at his residence with the trailer parked on the side of the house. The floor of the proposed garage would be concrete. The existing shed will be removed. Mr. Russell does not rebuild engines but he does tune them up. He never starts the race car engines at his residence.

Andy Kelkenberg will do the construction on the proposed garage and Mr. Russell will start as soon as possible.

Mr. Mills asked what Mr. Russell would do if his request was denied. Mr. Russell does not know what he would do; he really needs the garage.

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 9, as written.

ON THE QUESTION:

Mr. Mills suggests two (2) conditions be placed on the motion:

- The existing shed must be removed.
- Reasonable landscaping to be done on the north, south and west of the property.

Mr. Michnik and Mr. Henning agree to include the above stated conditions in the motion.

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

MOTION CARRIED.

Appeal No. 10

Wendy Costanzo
Planned Unit Residential

Requests the Board of Appeals approve and grant a 68 square foot variance for the construction of a 1,028 square foot garage at 5948 Killarney Manor.

Appeal No. 10 is in variance to Section 229-55(D).

DISCUSSION:

Wendy Costanzo is present. Ms. Costanzo said she needs storage space for bikes and a third car. The construction materials for the proposed garage will match the house. Pauly Construction will do the work. There are no requirements under the Homeowners Association Agreement indicating permission needs to be obtained prior to any construction being performed on property within the development. Town Attorney Steven Bengart suggests the applicant make sure there are no deed restrictions.

There are no neighborhood notification forms on file. Ms. Costanzo said she gets along with both neighbors and neither has a problem with her request.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 10, as written.

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

MOTION CARRIED.

Appeal No. 11

Dash's Market
Traditional Neighborhood District

Applicant is requesting a variance to allow a primary building sign for a plaza tenant and/or commercial operation not having one or more common walls at 8845 Main Street in the Traditional Neighborhood District.

Appeal No. 11 is in variance to Section 181-3(L)(2).

DISCUSSION:

Joseph Dash, owner of Dash's Market, is present. Anthony Petrella is the store manager of the Dash's Market on Main Street in Clarence and is present as well. Mr. Dash explained he needs the variance to represent two (2) licensed operations he has within the store. The first one is LT's Old Time Subs and Pizza and the second is Spot Coffee. The signs will be put on the front west side of the building over the entrance to both parts of the operation.

Chairman Henning said there is an issue with adjoining walls. Planning Board Chairman Gerald Drinkard has written a letter dated September 1, 2009 in which he agrees with the variance request. The letter is on file. Jim Callahan said strict interpretation of the Sign Law identifies more than one sign is not allowed. It has been identified the location is not a plaza. It is understood that these are separate businesses within the walls of Dash's Market, so it could be considered a plaza and the signs would be acceptable as such.

Mr. Dash is a licensee of Spot Coffee; he buys their ingredients and supplies from them and must abide by their recipes. He pays a percentage to LT's to run the pizzeria.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 11, as written.

ON THE QUESTION:

Mr. Mills asked what type of illumination the signs will have. Mr. Dash said will have LED backlighting.

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

MOTION CARRIED.

Motion by Robert Geiger, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on August 11, 2009, as written.

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

MOTION CARRIED.

Meeting adjourned at 9:45 p.m.

Carolyn Delgato
Senior Clerk Typist