

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Wednesday, February 14, 2023

Chairman Ryan Mills called the meeting to order at 5:30 p.m.

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey	Raymond Skaine
Richard McNamara	Gerald Drinkard	

Zoning Board of Appeals members absent:

Patricia Burkard

Town Officials present:

Director of Community Development Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Motion by Gerald Drinkard, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on December 13, 2022.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Ignazio A. Napoli
Residential Single-Family

Town Code Reference:

1. §229-52(A) *Established front yard setback of 40'
2. §229-52(B)

Applicant requests a variance:

1. of 31'6" to allow for a 71'6" front yard setback; and
2. of 1'10" to allow for a 10'8" side yard setback;

all for the construction of a single-family home as an addition to the existing structure located at 8529 Stahley Road.

Mr. McNamara recused himself from Appeal No. 1

DISCUSSION:

Dave Sutton from Sutton Architecture was present to represent the applicant.

Mr. Sutton explained that the first variance request is for an established front yard setback. The setback states that the house should align with the other houses on the street, with an established setback of 45 ft.

The reason they are requesting this variance is because the property is unique in the sense that there is an existing pole barn located on the property without an existing residence / primary structure. They are proposing to add a residence to the property.

Mr. Sutton stated that by putting the single-family home where they are proposing brings the site in to compliance. The challenge they're facing is that the existing pole barn already on the property establishes a logical addition for the placement of the single-family home. Because of this, they are proposing to locate the home approximately 71 ft. back from the property line.

Mr. Sutton explained that after reviewing the floor plans and elevations submitted, they have justified the variance request.

Mr. Sutton stated that the applicant has presented the project to the neighbors, and are very interested in working with the neighbors that may be impacted. Mr. Sutton added that they feel the addition of a single-family home to this existing accessory structure would enhance the neighborhood.

Referring to the second variance, Mr. Sutton explained that the side yard setback is minimal. The property lines are unique, with a slight angle towards the street, narrowing the property at the front. This was a challenge in terms of design that resulted in the request for the second variance request.

Reiterating his points, Mr. Sutton stated that the uniqueness of the lot and the existing accessory structure are the reasons for the variance requests.

Mr. Drinkard referred to the minutes from a previous meeting when this proposed project was first brought to the Zoning Board in 2018 with discussion regarding the future of the property.

Mr. Drinkard commented that the prints submitted for the proposed single-family home reflects the suggestions from the 2018 Zoning Board of Appeals meeting.

Mr. Drinkard asked if the existing pole barn that is approximately 25 years old should be a foundational piece of the property including the proposed house. Has the pole barn been tested or reviewed from an engineering perspective?

Mr. Sutton responded that he has done an initial review of the structure itself, and it is in very good condition. The age of the building is beginning to show on the exterior of the building, it has been used as a work structure. Mr. Sutton explained that the accessory structure will have an extensive face lift.

Mr. Sutton added that the applicants, Mr. and Mrs. Napoli intend to live at this proposed single-family home, and it will serve as their primary residence.

Mr. Drinkard noted that the pole barn is back approximately 70 ft. with the proposed house equal to the pole barn, the reason for the variance request is obvious.

Mr. Skaine indicated that the 10'8" side yard setback is not for the entire length of the side yard, but rather a smaller area.

Mr. Sutton confirmed that yes, it is for a small corner of the proposed building. Due to the uniqueness and the angle of the lot, it is only the corner and not an entire setback.

Explaining that he agrees with Mr. Sutton that the addition of a single-family home to the property will be an improvement, Mr. Krey asked for details regarding the facelift that Mr. Sutton mentioned for the existing pole barn.

Mr. Sutton stated that if the variance is approved for the house, then once the materials are chosen for the house, the pole barn will be re-done with similar materials.

Chairman Mills entered the elevations titled E2 in to the record as Exhibit A.

Chairman Mills asked Mr. Sutton if he will be using something similar to the materials indicated on the elevations, Mr. Sutton responded yes.

Mr. Sutton acknowledged that he is willing to commit to the conceptual nature of the presentation, with the aesthetics of the proposed home matching the aesthetics of the existing pole barn.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, Mr. Bleuer noted that comment was received by the following neighbor:

1. Susan Anders of 8550 Stahley Rd:
 - concerns with a business being operated out of the existing pole barn, identifying landscaping and snowplowing type equipment
 - would like for the prohibition of a business be prohibited considered by the Zoning Board

Chairman Mills asked Mr. Sutton if any business is being conducted.

Mr. Sutton explained that the applicant and his son own additional properties throughout the Town of Clarence and store their personal maintenance items for their own properties in the existing pole barn.

Chairman Mills asked Mr. Sutton if a condition is made that a business not be operated out of the pole barn would they consent to it.

Mr. Sutton responded yes; it is strictly for personal business, so they would agree.

Mr. Drinkard asked if there are any documents indicating what the landscaping will be on the front of the proposed home.

Mr. Sutton responded that they have not done a final landscape plan, but it will be substantially landscaped not only in the front but the back of the property also.

Mr. Drinkard referred to the three site plan options, one that has more landscaping, and encouraged Mr. Sutton to soften the building with landscaping.

Mr. Sutton agreed, they will continue to finalize their plans by highlighting the house and the primary features.

ACTION:

Motion by Patrick Krey, seconded by to **approve** Appeal No. 1 with the following conditions:

- same materials used on the front of the home will also be used on the front of the pole barn so that the aesthetics match;
- no business is to be conducted out of the home

ON THE QUESTION:

Mr. Sutton stated that he heard, understands, and agrees to the conditions.

Mr. Krey stated that the reason he is voting to approve this appeal is as the applicant stated, there is a benefit to the homeowners living on the property.

The property was non-conforming with the pole barn already there and no residential primary structure. This is a residential single-family zone, so this will bring the property in to conformance.

It will not create an undesirable change to the neighbor, but instead it will be a positive addition.

The variance is for the minimum that can be granted in order to make it feasible for the applicant to live in the home.

Chairman Mills noted that the east boundary line is at an angle, which makes this lot uniquely shaped, further necessitating the need for a variance.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye				

MOTION CARRIED

Mr. McNamara returned to the meeting.

Appeal No. 2

Kyle Dunn
Agricultural Rural Residential

Applicant requests a variance to allow a 170' front yard setback located at 6455 Salt Road.

Town Code Reference:

§229-41(A) *Average front yard setback within 500' is 60'

DISCUSSION:

Kyle Dunn was present to represent his request, explaining that while the variance is large, the reason is because he is building a pre-fab metal building with a living space inside the structure.

The structure is a two-story, 30' wide by 80' long and 20' high steel building with a 20' by 30' living space located in the back half of the structure.

Mr. Dunn added that the structure complies with all regulations of a regular house. He is requesting to set it back 170' is because he has future plans to build a house in front that will ultimately be in line with the rest of the houses on the street.

Mr. McNamara asked why Mr. Dunn is not building the house up front first.

Mr. Dunn responded that the housing market is very expensive. He bought the property approximately 3 years ago with the intention of building a house. After compiling reasonable quotes on potential houses to build, he saved up money. When he got updated quotes approximately a year ago, the prices had increased substantially. The prefabricated metal structure with the living space inside is much less costly, making it affordable for him to live in this structure until he gets the house built.

Mr. McNamara voiced his concerns, starting with the fact that Mr. Dunn would eventually need to return to the Zoning Board of Appeals for a variance to build a house in the front yard setback.

Mr. Dunn responded that he is aware of that. His plan is to condemn and tear out the living space within the original metal structure before building the new house.

Mr. McNamara reiterated that a variance would be needed to build the house at the front of the property.

Mr. Dunn asked if a variance would still be needed to build the house at the front of the property even without a house existing on the property.

Mr. McNamara responded yes, because if this variance is approved for a 170' front yard setback, the next house will be built in the setback of this proposed existing structure.

Mr. Bleuer explained that if the Zoning Board approves this variance to allow the primary structure to be this barn with the living space. Then Mr. Dunn would not be permitted to tear out the principal living space because it would then default to an accessory structure without a principal structure being on the property. Before the living area is torn out, another variance would be required from the Zoning Board of Appeals allowing the living area to be torn out, constitute it as an accessory structure, which would then make it possible for Mr. Dunn to seek another additional variance permitting him to build within the now established front yard setback, which is what would be established by approving tonight's variance request.

Mr. Bleuer continued, stating that there would be another additional variance allowing Mr. Dunn to have an accessory structure without a principal structure during the construction.

Mr. Skaine stated that he has never been in favor of building that far back, because it encroaches on the established neighbors.

Mr. Skaine noted that based on the stakes placed on the property, the neighbors at 4555 and 4565 Salt Road will lose their privacy. Mr. Skaine explained that he feels it is inconsiderate of the neighbors to build that far back on a property. Additionally, the structure will change the character of the neighborhood due to the size.

Mr. Krey acknowledged Mr. Dunn's concerns with inflation and the cost of living, and asked Mr. Dunn if he has explored any other options.

Mr. Dunn responded that he has looked at a couple of other options like renting or building a smaller home. Mr. Dunn noted that a smaller home approximately 1800 sq. ft. is still double the cost of what this proposed structure costs.

Mr. Dunn added that he is a welder and utilizes garage space. This plan would allow him to already have a garage in place for his future house.

Mr. Krey stated that this proposed structure is drastically out of character with what is currently zoned for that area and the existing homes in the neighborhood.

Mr. Krey explained that Mr. Dunn will need to continue to explore other ways to develop the property.

Mr. Drinkard stated that the law says no accessory building may be built without a primary structure on the lot. Mr. Drinkard continued, stating that this should be the driving force for Mr. Dunn to seek out other options. Mr. Drinkard is not in favor of this request; it will drastically change the character of the neighborhood.

Chairman Mills reiterated concerns similar to the other board members; specifically, the aesthetics and character of the neighborhood with a structure placed that far back and occupying the status of the principal residence.

Chairman Mills asked Mr. Dunn how long he plans to live in the living space within this structure.

Mr. Dunn responded he hopes between 10-15 years, until he can save enough money to build a house. He has paid for the property in full. He doesn't have a definitive time line of how long it would be. It could be sooner, it's all based on how long it takes to save up the money to build a house.

Neighbor Notifications are on file.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Gerald Drinkard, seconded by Raymond Skaine to **deny** Appeal No. 2.

Mr. Drinkard explained that the request would disturb the character of the neighborhood for a significant length of time until the house is built.

ON THE QUESTION:

Mr. Krey explained that the reason he is voting to deny Appeal No. 2 is because he believes it will create an undesirable change to the character of the neighborhood. Also, it would create a detriment to the neighboring property by granting the area variance.

Mr. Krey noted that he appreciates the fact that the applicant has purchased the property, and that materials are costly, but other options should be explored.

Chairman Mills added that correspondence was received from David and Lydia Kawaler of 6445 Salt Road stating their opposition to this variance, adding that they feel it would have a negative impact on the value of their property. Also, that it would have an adverse effect on the characteristics of the neighborhood.

The correspondence was placed in the project file.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

Appeal No. 3

Marlana W. White
Residential Single-Family

Town Code Reference:

1. §229-55(D)
2. §229-55(D)
3. §229-55(H)

Applicant requests a variance:

1. of 751 sq. ft. to allow for a total of 1,711 sq. ft. of attached garage space; and
2. to allow a detached accessory structure (pool house) to be located within the front yard setback; and
3. of 50 sq. ft. to allow a 250 sq. ft. detached accessory structure; located at 8885 Williams Court.

DISCUSSION:

Marlana White was present to further explain her request and answer any questions.

Mrs. White stated that her request is for a very large garage and a pool house. The reason for the size is because of their large vehicles, multiple recreational vehicles, and all of their other stuff. Also, it will be used as a workspace, she is an artist and has a lot of materials.

Regarding the pool house, Mr. Krey noted that because their property is located on a corner lot, they have two front yards.

Mr. Krey asked Mrs. White if they plan to do any landscaping around the proposed pool house.

Mrs. White responded that they plan to put a line of trees along the side closest to the retention pond. Though nothing is confirmed, they have plans for landscaping including trees and bushes all around the property for privacy purposes.

Mr. Krey stated that he would like to make it a condition if this request is approved, to include landscaping to mitigate the view.

Mrs. White responded that they do plan to include rows of trees and bushes, that she marked on Chairman Mills photo as “T” and “B” along the north and south sides of the property, and is entered as Exhibit 1.

Mrs. White stated that she would like to plant pine trees to keep it in line with what the neighbors currently have.

Mrs. White explained that the neighbors on her street would like to have the existing berm redone, and since it is on their property, and the homeowner's association takes care of it, they plan to do even more.

Mr. Drinkard asked Mrs. White if they have a homeowner's agreement.

Mrs. White responded yes.

Mr. Drinkard asked who will manage the retention pond that is on their lot.

Mrs. White responded that the homeowner's association does, it is in the homeowner's agreement.

Mr. Drinkard asked if there is anything that Mrs. White is requesting in her variance that is not allowed per the homeowner's agreement.

Mrs. White responded no, and she has shown her plans to all of her neighbors and they have all been receptive of them.

Mr. Krey asked for the total square footage of the proposed home that they are building is.

Mrs. White responded that the main house not including the garage, and what is slightly more than 4,500 sq. ft.

Mr. Skaine praised Mrs. White for the beautiful plans.

Chairman Mills asked about the living space adjacent to the proposed garage is intended for.

Mrs. White responded that it is currently intended to be a workshop with an open layout, utility sink, and a bathroom.

Chairman Mills asked if they made it a condition of approval that no business is to be conducted from the structure, would that be agreeable.

Mrs. White responded yes.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Patrick Krey, seconded by Chairman Mills to **approve** Appeal No. 3 as written with the following conditions:

1. row of trees and bushes planted on the west and south sides of the property as shown in Exhibit 1.
2. Trees to be no less than 4-5 ft. in height
3. Trees spaced no more than 15 ft. apart with bushes to fill in the gaps

- 4. No business to operated out of the attached accessory structure

Mrs. White stated that she heard, understands, and agrees to the conditions.

ON THE QUESTION:

Mr. Krey explained that the homes currently built in the same area are large. This proposed home and accessory structures will blend nicely with the neighborhood and not have any negative impact.

Chairman Mills added that due to the parcel size and the extensive landscaping that the applicant has agreed to as illustrated in Exhibit 1 has mitigated any of the impacts from the variances. It also complies with the character of the neighborhood.

Richard McNamara	Aye	Patrick Krey	Aye	Ryan Mills	Aye
Raymond Skaine	Aye	Gerald Drinkard	Aye		

MOTION CARRIED

Appeal No. 4

Thomas & Patricia Macy
Planned Unit Residential Development

Town Code Reference:

- 1. §229-52(C)
- 2. Map Cover 2614 Sub Lot 69

Map Cover 2614 Sub Lot 69

Applicant requests a variance:

- 1. of 17' to allow a 28' rear yard setback; and
 - 2. to allow a reduction in area of 3,387 sq. ft. to a map covered lot of record; and
 - 3. to allow a reduction of frontage of 12.11' to a map covered lot of record;
- located at 9548 Cobblestone Drive.

Mr. Bengart stepped out of the meeting.

DISCUSSION:

Sean Hopkins and Barbara Nuchereno were present on behalf of the applicants.

Mr. Hopkins distributed additional handouts.

Chairman Mills noted that each board member has received a 6-page packet titled “Town of Clarence Zoning Board of Appeals”.

Referring to an aerial photograph of the property, Mr. Hopkins explained that they are seeking 3 area variances to allow an existing parcel of record with an address assigned of 9548 Turnstone Drive to be utilized as a single-family home.

Chairman Mills noted that the packet Mr. Hopkins distributed will be labeled Exhibit 1 and the aerial photo labeled Exhibit 2.

Mr. Hopkins pointed out a small reservoir of water on the aerial photo, noting that is what separates two parcels, the smaller triangle parcel is owned by the Sewage Works Corporation. This is important, because it is what is triggering the need for the area variances.

Mr. Hopkins explained the parcel that is in front of the Zoning Board of Appeals today is approximately .4 acres, zoned Planned Unit Residential. The parcel was purchased by the Spaulding Lake Homeowner's Association, which is when a minor mistake was made. Mr. Hopkins continued, noting that rather than purchasing the small piece of property that provides access to the pump station for the community, it was not acquired with the property. It should have been acquired and been an easement, rather than split off and kept as a separate parcel.

The parcel that is in front of the Zoning Board tonight was originally filed on a map cover within a much larger residential neighborhood as subplot No. 69 under map cover 2614, it was a legal lot of record.

Mr. Bleuer noted that it was a map covered lot of record.

Mr. Hopkins reviewed the three area variances that they are requesting.

Mr. Hopkins explained that within the Residential Single-Family zone, the minimum lot size required is 20,000 sq. ft. The lot in question is short of that requirement by 3,378 sq. ft. Mr. Hopkins noted that had this lot originally included this area retained by Sewage Works Corporation for the pump station, the lot would be 20,800 sq. ft.

Referring to the variance for frontage, the lot in question is short of the required lot frontage by 12.11 ft. Zoning Code requires 125 ft. of frontage.

Mr. Hopkins reviewed the last variance noting that most of the home will comply with the setback, with the exception of the corner of the home as it gets close to the property owned by the Sewage Works Corporation. Mr. Hopkins added that if they didn't obtain this area variance, they could still build a house here, but the house would not be parallel with the frontage, resulting in an awkward layout.

Mr. Hopkins continued to review the criteria for area variances in relation to this Appeal.

Mr. Drinkard asked how it can be changed without ownership of the strip where the driveway is on and reduce the size of a lot without the owner having knowledge of it.

Barb Nucherno responded to Mr. Drinkard's question, stating that she has previously worked with the applicant, who previously lived in the house next door and have since sold it.

Ms. Nucherno continued, stating that the applicant purchased this lot separately in the 1990's, there was always a driveway and staging area for the pump station. When the Homeowner's Association sold it to the applicant, they chose not to keep the easement. Ms. Nucherno explained that the applicant believed the lot was still a buildable lot, they had no reason not to.

Mr. Drinkard asked Mr. Bleuer about the Planned Unit Residential Development (PURD) zone.

Mr. Bleuer responded that the PURD zone allowed for a flexible lot type, there was no standard. Many of the PURD zoned areas in the Town of Clarence have a variety of lot sizes.

Mr. Hopkins added that generally the PURD zones were based on a layout and whatever criteria was agreed upon with the then existing Town Board, is what was to be built.

Mr. Drinkard noted that at 50,000 sq. ft., this was an incentive lot according to the law.

Mr. McNamara asked if the applicant has attempted to gain ownership of the back part of the parcel.

Mr. Hopkins responded that he does not believe so, and that in the grand scheme of things they want to. If they don't need to own it and the lot is already there, there is no need to go through the trouble.

Referring to the rear yard setback, Mr. McNamara noted that it is a pond back there, and there will not be any imposition on any other neighbors.

Mr. Hopkins responded yes; it would not result in the house being any closer to another house.

Mr. Krey stated that history aside, if you review the layout of the property with the aerial photo provided of the layout of the lot, it resembles the majority of the other lots in the neighborhood. There does not appear to be any aesthetic changes.

Mr. Skaine asked for clarification regarding 9548 Cobblestone Drive versus 9548 Turnstone Drive.

Ms. Nucherno responded that her clients, the sellers of the property owned the house next door and purchased this lot at a later date, making them separate lots. To make things easier for themselves, they combined them in order to have one tax bill. The applicants sold the house and it has not yet gotten to the point of re-establishing yet.

Chairman Mills asked if this variance was denied, would the applicant would then need to purchase the area back.

Mr. Hopkins responded that they would attempt to, but it would be a complicated process.

Chairman Mills asked how often the pump station at the back of the lot is utilized.

Mr. Hopkins responded he does not believe it is on a regular basis, it's a private pump station.

Ms. Nucherno added that there is a party interested in this lot, and if they needed to go back to the Homeowner's Association in an attempt to purchase the property with the pump station, they would most likely lose the current buyer.

Mr. Hopkins explained that there is a Contract of Sale contingent on the approval of this variance.

Mr. Drinkard asked if there is any restriction by the Homeowner's Association or an agreement with the buyer to build a house that is in agreement with the character of the neighborhood.

Ms. Nucherno noted that there may be, and if there are then the buyer will need to comply. Chairman Mills asked Ms. Nucherno if she has any indication what size house the potential buyer plans to build.

Ms. Nucherno responded that they are waiting to consummate the transaction to find out if it is a buildable lot.

Mr. Drinkard asked if the buyer would potentially shy away from a condition stating the potential home must be 3,000 sq. ft. or greater.

Mr. Hopkins responded he does not believe there is a need for that, he prefers there not be. A minimum sq. ft. requirement would make more sense if necessary.

Mr. Krey asked Mr. Bleuer if zoning code has a minimum requirement for size.

Mr. Bleuer responded that 1,000 sq. ft. is the minimum size required for a ranch home (corrected below).

Ms. Nuchereno stated that she believes Spaulding Lake has a minimum lot size requirement for architectural compliance.

In regards to Public Participation, the following residents spoke:

1. Christopher Jermak of 9540 Turnstone Drive:

- stated that the applicant purchased the lot to keep it from being built on
- concerns with of the many things they have heard.
- concern that the lot would not be big enough to build a house that complies with the minimum square foot requirement for Spaulding Lake
- hopeful that if this variance is approved, it is contingent on meeting the Homeowner's Association minimum size requirement

2. Heather Jermak of 9540 Turnstone Drive:

- concerns with the way that the lot is currently built, there is a large berm represented in the photo and they are curious if the new owners will tear down the berm
- the pumping station is accessed on a regular basis multiple times a week because the sewer system in the neighborhood is a private system, part of the main pumphouse existing on Goodrich Road

Discussion continued on the status of a Spaulding Lake Homeowner's Agreement.

Chairman Mills explained that because dues are paid for a Homeowner's Association, there is one, and whomever purchases this lot will have restrictions that they must comply with as to the size of the structure.

Mr. Drinkard continued to explain the legality of a Homeowner's Agreement.

Mrs. Jermak asked the Zoning Board if they have a copy of the neighborhood bylaws.

Mr. Bleuer responded no; it is a private matter that the Town of Clarence has no involvement in.

Mr. Bleuer corrected himself, stating that the minimum square footage in the Residential Single-Family zone which the PURD defaults to. For a one-story building is 1,350 sq. ft. If an Architectural Review Committee for Spaulding Lake exists, the Zoning Board has no control over that and the Spaulding Lake Architectural Review Committee have the final authority on the size and type of home that is built.

Neighbor Notifications are on file.

Mr. Hopkins clarified that they are not suggesting the proposed house will be 1,300 sq. ft. Chairman Mills asked if they know if the buyer is an individual or a corporation.

Ms. Nuchereno responded that it is an individual.

Discussion continued regarding the potential prevue of the Spaulding Lake Homeowner’s Association.

Chairman Mills reiterated they have nothing within their purview regarding the size of a potential home. The variances in front of them pertain strictly to the lot itself.

Discussion continued.

ACTION:

Motion by Richard McNamara, seconded by Raymond Skaine to **approve** Appeal No. 4 as written, with the following conditions:

1. size of the home to conform to Homeowner’s Association regulations, if applicable.

ON THE QUESTION:

Mr. Drinkard requested a condition placed regarding the size of the home being in compliance with the Spaulding Lake Homeowner’s Association.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

Meeting adjourned at 6:48 p.m. with a motion by Raymond Skaine.

Amy Major
Senior Clerk Typist