

**Town of Clarence**  
One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
April 11, 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

Other Interested Parties:

Nick Castellani	Donna Hartnett	Katherine Connelly	Brian White
Martha Grano	Michael Grano Jr.	Michelle Grano	Joseph Notaro
Louise Notaro			

Motion by Gerald Drinkard, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on March 14, 2023.

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

MOTION CARRIED

**NEW BUSINESS**

**Appeal No. 1**

Brian White  
Agricultural Rural Residential

Town Code Reference:

1. §229-44(E)
2. §101-3(C)(2)

Note: A corner lot shall be considered to have two front yards from the public road right-of-way to the closest point of the principal structure.

Applicant requests variances:

1. to allow a detached accessory structure (shed) to be located within the front yard setback; and
  2. of 2' to allow a 6' fence to be located within the front yard setback;
- located at 4260 Ransom Road.

**DISCUSSION:**

Brian White was present to represent his request, explaining that he lives on a corner lot, with the front of his home facing Tillman Road and his horseshoe driveway access on Ransom Road. He would like to erect a shed, and Town Code dictates that the shed needs to be located behind the house which he is unable to do.

Mr. White noted that he would also like to install a 6' fence to help bring his property all together and make it aesthetically pleasing.

Mr. Drinkard asked what the red building is that is located on Mr. White's property. Mr. White responded that it is an old telephone building and it was there when he purchased the property. He uses it as a woodworking workshop for himself.

Mr. Drinkard asked if the red building has utilities in it. Mr. White responded yes; it has electricity.

Mr. Drinkard asked Mr. White if he runs a business off of his property. Mr. White responded no; he has no intentions to.

Mr. Drinkard asked why Mr. White needs such a large shed, it is very high and would he consider reducing the size.

Mr. White explained that he would like to get his ATV in the shed so he needs the doors that he has planned.

Mr. Drinkard asked what color the shed will be. Mr. White responded that it will match his house.

Mr. Drinkard asked Mr. White why he wants a fence, it will block the proposed shed. Mr. White responded that it will give him more privacy in his backyard.

Mr. Skaine asked how long the fence will be.

Mr. White responded that it will be 30 ft. long.

Mr. Skaine asked about the trees that are close to where the fence is proposed to go. Mr. White explained that one of the trees needs to be taken down, and he will either split the other three trees or move them back further on to his property.

Mr. Skaine clarified that Mr. White isn't requesting a variance for the size of a shed, he's requesting a variance to have a shed.

Mr. White confirmed yes.

Mr. Krey asked how large the shed will be.

Mr. White responded 12' by 24'.

Mr. Krey asked if a variance is needed for the size of the shed, since it exceeds 200 sq. ft.

Mr. Bleuer explained that in the Agricultural Zone an accessory structure is not limited to 200 sq. ft.

Mr. Krey asked what kind of fence Mr. White plans to put in and if he plans to do any landscaping in front of the fence facing the street.

Mr. White responded that it will either be pressure treated dog-ear or scalloped top.

Mr. McNamara asked if he built the house.

Mr. White responded yes, he built it himself in 2003.

Mr. McNamara explained that he recalled a variance from the construction of the house due to the red building already being located on the property within the front yard setback.

Mr. White responded that he doesn't believe there was a variance, because when he called to see if it was a buildable lot it went through the process without a variance.

Mr. McNamara noted that the red building is currently within the front yard setback.

Mr. White questioned if it is in line with his garage, wouldn't that mean it's within the front yard setback.

Mr. McNamara stated that it's closer to the street than the house.

Discussion continued regarding the location of the red building.

Mr. McNamara asked why Mr. White can't place the proposed shed behind the red building.

Mr. White responded he will need to remove more trees.

Mr. McNamara stated that he already has to take trees down to put it in its proposed location. He could put the proposed shed back where the trailers are, there are no trees in that location.

Mr. White explained that he would then feel like he is losing more of what he considers his back yard.

Mr. McNamara noted that there is already one building within the front yard setback, adding another will just be too much.

Mr. White stated that the location he has chosen has the least impact on trees.

Mr. McNamara asked Mr. Bleuer what the front setback on Ransom Road is.

Mr. Bleuer responded that the established front setback for the property is 76.2 ft.

Chairman Mills asked Mr. White if he would consider adding landscaping in front of the fence.

Mr. White responded he had not, because he'd rather keep the grass up to it and keep it clean and neat.

Chairman Mills asked if Mr. White will construct the shed or order it. Mr. White responded that he will construct it himself.

Mr. White added that the shed will have one window that will face his backyard for some light. He does not plan on running any electricity or a driveway to it. That is another reason why he does not want to put the shed back any further, he doesn't want to add a driveway.

Chairman Mills asked what the foundation is for Mr. White's garage.

Mr. White responded that it is concrete, he plans to finish it once his kids are out of college.

Mr. Drinkard asked if there has been any feedback from neighbors.

Mr. Bleuer responded no. Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Raymond Skaine, seconded by Gerald Drinkard to **approve** Appeal No. 1 as written with the following conditions;

- roof and siding on the shed are to match the house
- no business to be conducted from the structure

**ON THE QUESTION:**

Mr. Krey explained that it is a unique lot without an abundance of rear yard to place the shed due to the way the house is situated.

Also, the natural barrier provided by the trees as well as the fencing will protect the street view so that there will not be an undesirable change to the character of the neighborhood.

Chairman Mills pointed out that there is a preexisting accessory structure on this property that has been on the lot prior to the primary residence.

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

**MOTION CARRIED**

**Appeal No. 2**

Katherine H. Connelly  
Agricultural Rural Residential

Applicant requests a variance to allow an accessory structure (pole barn) to remain on a lot that currently does not contain a principal structure located at 6591 Conner Road.

Town Code Reference:  
§229-44(D)

**DISCUSSION:**

Katherine H. Connelly and her attorney Donna Marie Hartnett were present to represent the request.

Ms. Hartnett explained that Mrs. Connelly owns approximately 15 acres of property that has a house and a barn sitting on it. The property was purchased in 2 separate parcels; one with the house, and the other was the 10-acre parcel next door. They then had the parcels combined for tax purposes and one tax bill.

After the death of her husband, Mrs. Connelly would like to sell off the 10-acre parcel and maintain the home. Basically, splitting the parcel back to its original status. After contacting the Planning Office, Ms. Hartnett was advised that a variance would be necessary. The barn located on the 10-acre parcel would be against code as an accessory structure without a principal structure.

Ms. Hartnett explained that the 10-acre parcel is under contract to be sold, subject to approval. The buyers of the parcel have plans to do a minor subdivision and construct 4 single-family homes on the 10-acre parcel.

Mr. Skaine asked how far south the accessory structure is from the current property line.

Ms. Hartnett responded that the survey shows it is approximately 10.5 ft.

Mr. Skaine asked what the size of the structure is.

Ms. Hartnett responded that it is approximately 30x40 ft.

Mr. Skaine asked what the reason is for not keeping the accessory structure with the house and splitting off the other 9+ acres.

Ms. Hartnett responded that they had considered that, but the buyer requested the accessory structure as part of the sale.

Ms. Hartnett stated that the road frontage for the 10-acre parcel is 550 ft.

Discussion continued; Ms. Hartnett noted that the only other option is demolish a perfectly good barn.

Mr. Krey asked if the request can be approved with the condition that they must build a home on the lot with the barn.

Mr. Bengart explained that they cannot do that, because it runs with the land and the property is being sold off, and we won't be able to keep control over it.

Discussion continued regarding the enforcement of this potential condition.

Phil Severyn with Severyn Development, a representative for the potential buyer was present. Mr. Severyn noted that they are working with the purchaser of this property and explained that they are considering 3 lots with a minimum of 150'. There is no consideration for 4 lots.

Mr. Skaine noted that the existing pole barn would stay with the house.

Mr. Severyn stated that the proposal for the property was for 10 acres, and changing that would change the dynamics of the sale.

Mr. McNamara asked if the pole barn was there when the house was built.

Ms. Harnett responded that they built their house in 1989. In 1992 they purchased the adjacent 10 acres, joined the properties, and then built the barn.

Discussion continued.

Chairman Mills noted that he is troubled with having an accessory structure on its own for an undetermined amount of time.

Mr. Drinkard asked Mr. Severyn if he intends to purchase the whole property with the barn.

Mr. Severyn explained that it is not him purchasing it, but their client. It is their intention to then help him to divide it and build him a home.

Mr. Drinkard asked if the first house that the owner develops will be the lot under question that has the barn on it.

Mr. Severyn responded that it is not currently the plan, but it can be if it is a requirement.

Mr. Drinkard stated that there could be a split of the 10 acres with the non-conforming building on one of the lots after the split. It may not be the first lot to be built on.

The location of the existing pole barn was the topic of continued discussion.

Mr. Drinkard asked Mr. Severyn if he has an approximate value of the pole barn.

Ms. Hartnett responded that it is a 30' x 40' stainless steel pole barn, half is cement and half was used for horse stalls. It is in excellent shape.

Mr. Bengart asked Ms. Hartnett if there is a contract in place, and if the contract is subject to the approval of this variance.

Ms. Hartnett responded yes, and that it was originally subject to receiving approval for the split, and is now subject to the approval of this variance.

Mr. Bengart asked if the contract contemplates anything aside from getting the barn, and allowing it to stay in place.

Ms. Hartnett explained that the contract did not mention the barn. They were unaware prior to seeing the survey exactly where the barn was located in relation to the property.

Mr. Bengart asked Mr. Severyn if he is in a position to state that the buyer will agree to take down the pole barn after the sale closes, at their own expense.

Mr. Severyn stated that he is not able to speak to that extent on the buyer’s behalf or commit to any conditions.

Mr. Bengart explained that the hardships are self-created, therefore using the components to receive a variance would not qualify.

If this item is tabled, Chairman Mills advised that the purchaser or an agent of the purchaser should consider being present at the next meeting to answer any potential questions pertaining to the sale of the property.

Chairman Mills asked that Ms. Hartnett explore the benefit of keeping the pole barn with the property as it is.

Mr. Bengart asked if Mr. Severyn has been hired to handle the split and the building of the three proposed homes.

Mr. Severyn responded yes.

The applicant has requested the item to be tabled so that she can explore alternative options that would keep the accessory structure with the house.

**ACTION:**

Motion by Raymond Skaine, seconded by Ryan Mills to **table** Appeal No. 2.

**ON THE QUESTION:**

Neighbor notifications are on file.

In regards to Public Participation, no one spoke.

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

**MOTION CARRIED**

**Appeal No. 3**

Martha A. Grano  
Agricultural Rural Residential

Applicant requests a variance to allow for a total of three (3) living units within an existing principal structure located at 10640 Clarence Center Road.

Town Code Reference:  
§229-37

**DISCUSSION:**

Michael Grano Jr. of 63 Shadow Wood Drive was present to represent the applicant, his mother. His parents Michael and Martha Grano purchased the property at 10640 Clarence Center Road in 2021. The 5,000 sq. ft. building was listed and sold to them as a 3-unit property. The realtor, attorney, bank,

mortgage and Town of Clarence tax assessor have it listed as a 3-unit property, and taxes have been paid as a 3-unit property.

Mr. Grano explained the extenuating circumstances that have led them to needing this variance, adding that his mom Martha Grano would like to bring this property in to compliance and make it a legal 3-unit building. If the variance is not approved, it would become a financial hardship to maintain and repair the property.

Mr. Grano added that it would affect the selling price of the home if it needs to be sold as a 2-unit rather than a 3-unit.

Mr. McNamara asked if there is anything for the record showing that this building is listed as a 3-unit on the tax rolls.

Mr. Grano noted that it is public record. They don't have a printout, but it is easy to find.

Mr. McNamara stated that if they have to make a decision, they need to see the facts.

Mr. McNamara asked how they know it is taxed as a 3-unit.

Mr. Grano stated that is what they were told.

Michelle Grano, daughter of Martha Grano added that their attorney also told them.

Discussion continued regarding formal records from the Assessor's that indicate this building is taxed as a 3-unit building.

Mr. Bleuer explained that Assessed Class does not represent allowable zoning or building. They are mutually exclusive. Mr. Bleuer cannot speak on behalf of the Town of Clarence Assessor or the assessment practices, but it does not equate to allowable zoning. They look at the structure's use, not the allowable zoning.

Mr. McNamara reviewed other aspects of what would be needed to make the building a legal 3-unit building.

Chairman Mills asked how the units are broken down and laid out, in terms of a floor plan.

Mr. Grano stated that the first and second floors are separate units, approximately 2,000 sq. ft. The entrance to the third unit is essentially located at the basement. There are two driveways for the property.

Chairman Mills noted that the third unit is basically the basement, and does include a walk-out door. It can also be entered from the basement.

Chairman Mills asked if any family members are currently living there, or if it is an investment property only.

Mr. Grano responded that it is an investment property.



Mr. Krey stated that he would like to see more information in terms of the history of the property as well as a floor plan, before he is comfortable making any decisions.

If the variance is not approved, they would not be able to rent it as a 3-unit building and would not be able to keep it or sell it at a potential loss.

Mr. Drinkard asked if they had a home inspection conducted when they purchased the building.

Mr. Grano responded yes, and they approved it.

The home was also appraised by a bank appraiser also.

Mr. Drinkard clarified that a Town of Clarence Building Inspector inspected the property and deemed it a non-conforming third unit, without entering the apartment.

Mr. Drinkard stated that he would feel uncomfortable approving a non-conforming third unit without significant building inspections conducted.

Discussion continued regarding the use of non-confirming and how it applies to this property.

Ms. Grano explained how the property was presented to them when they purchased it. The third unit was described as the “back apartment”. Previous owners of this property also used it as a 3-unit home.

Mr. Drinkard asked what paperwork the building inspector left after he inspected the building.

Mr. Grano responded that he did not enter the building, he stayed on the exterior and noted that it is not listed as a 3-unit building.

Mr. Bengart stated that to his understanding, the Building Department will not enter the unit until it is legally listed as conforming a third unit. The most the Board can do at tonight’s meeting is to approve the 3-unit subject to the Building Department’s approval per Town Code.

Mr. Bengart added that anything the Zoning Board of Appeals can request to see that will show that this was not a self-created hardship will help them make a decision.

Mr. Skaine agrees with Mr. McNamara, he’d like to see documentation showing that this property was purchased with good intent.

Mrs. Grano asked for clarification as to what the Board would like to see as documentation to assist them in making a decision.

Mr. Grano requested to table this request so that they are able to supply additional documentation.

The following are examples of items that the board would use as supporting documents for the third unit:

- MLS data from realtor listing
- county tax showing status
- transactions that show the building is 3 units

- floorplan and history of 3-unit nature (assessment, listing, etc.)
- photos of the inside of all three units
- contract of sale showing the status and what was represented
- rented property rider
- 3<sup>rd</sup> unit costs

Mr. McNamara suggested the applicant do some research to assure the added costs that will be required are worth having the change made.

Chairman Mills discussed the price history for the property.

Neighbor notifications are on file.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Richard McNamara, seconded by Ryan Mills to **table** Appeal No. 3.

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

**MOTION CARRIED**

**Appeal No. 4**

Nicholas Castellani  
Restricted Business

Applicant requests a variance of 707 sq. ft. to allow a 907 sq. ft. detached accessory structure (pool house) located at 4664 Helenwood Drive.

Town Code Reference:  
§229-55(H)

**DISCUSSION:**

Nick Castellani was present to represent his request, adding that the proposed structure is 25’ x 35’ and includes a covered porch area, the enclosed area is 563 sq. ft.

Mr. Castellani stated that when he began this project, he had contracted with a contractor who was supposedly familiar with building code requirements. When Mr. Castellani applied for the permit, he was informed that they would need to apply for a variance.

They would like to have a structure that encompasses all of their needs; storage, outside sitting area, bathroom, and inside sitting area without having a cluttered yard.

Mr. Castellani explained that the enclosed sitting area is 206 sq. ft., the storage area is 187 sq. ft., there is a bathroom and a closet then a covered porch.

Mr. Skaine thanked Mr. Castellani for properly staking his yard.

Mr. Castellani explained that the back of his yard faces Eastern Hills Mall and often has garbage and other items blowing in to his yard. He is doing the best he can to make his yard look nice because looking at the back of the mall is not aesthetically pleasing.

Mr. Drinkard asked if any part of the proposed structure will be used for business.

Mr. Castellani responded no; he is a professional firefighter. He does have a snowplow business, but they have a shop in the City of Tonawanda.

Mr. Skaine noted that according to the supporting documents, the materials for the proposed building will match the house, which is brand new.

Mr. Krey asked how big Mr. Castellani's home is.

Mr. Castellani responded that it is 2,400 sq. ft.

Mr. McNamara complimented the project.

Chairman Mills asked if the materials are accurate on the documentation that Mr. Castellani submitted.

Mr. Castellani responded yes.

Chairman Mills noted that documents A1-A3 accurately depict what the constructed building will look like. These have been entered in to the file as Exhibit 1.

Chairman Mills asked if the plan is to construct this structure before the pool, though both are planned to be completed this summer.

Mr. Castellani stated that besides plumbing and electrical, he will be doing the work himself on the proposed pool house.

Neighbor Notifications are on file.

Mr. Bleuer stated that the Town of Clarence Engineering Department has reviewed this variance request. The proposed location is satisfactory, he is not located within the sanitary sewer easement. Mr. Bleuer asked that the applicant be aware, as the structure cannot shift in to the easement at all.

Mr. Castellani agreed.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Patrick Krey, seconded by Raymond Skaine to **approve** Appeal No. 4 as written.

**ON THE QUESTION:**

Mr. Krey stated that the applicant has a unique lot, and the close proximity to the mall makes this different than other properties that they have reviewed.

Mr. Krey added that it will not create an undesirable change to the neighborhood, and based on the size of the home it is scaled well.

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

**MOTION CARRIED**

**Appeal No. 5**

Joseph & Louise Notaro  
Commercial

Applicant requests a variance of 16'3" to allow an 8'9" principal structure side yard setback located at 4691 Quarry Lane.

Town Code Reference:  
§229-87(C)(2)

**DISCUSSION:**

Louise and Joseph Notaro were present to represent their request, explaining that they purchased the house without a garage and would like to add an attached garage.

Mrs. Notaro added that it will improve the appearance of the house. They will add siding and new siding, there will be a new roof line. The house was purchased in December for their son to live in.

Chairman Mills asked if they knew a variance would be needed when they purchased the house.

Mrs. Notaro responded no. The seller provided paperwork showing that the septic was approved for another bedroom, so they assumed it was all right to add an attached garage.

Mr. McNamara asked if they have spoken to their neighbors to the right of them.

Mr. Notaro responded yes; they sent the notifications out to notify the adjacent neighbors. Two of them have looked at their plans, and had no issue.

Mr. Drinkard asked what the green building is.

Mr. Notaro responded that it is a shed. It does not function as a garage because there is an existing septic underneath the driveway that cannot be driven over.

Discussion continued regarding access to the septic tank.

Mr. Drinkard asked where their son will live.

Mr. Notaro responded that they plan to attach a garage to a 1,000 sq. ft. home that exists on the property. Their son is living in the house not the garage.

Mr. Drinkard asked if there will be any business conducted out of the garage.

Mr. Notaro responded no.

Mr. Skaine asked about the stone wall to the south and where the property lies, is it part of their property.

Mr. Notaro responded yes; it is their property.

Chairman Mills followed up, confirming that the whole house will be new vinyl siding, and an architectural or metal roof. This will all be done at the same time the attached garage is built.

Mrs. Notaro stated that they may do the roof first, but it will all be the same project. The front window will be replaced as well, as well as the front door.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

**ACTION:**

Motion by Raymond Skaine, seconded by Richard McNamara to **approve** Appeal No. 5 as written.

**ON THE QUESTION:**

Chairman Mills pointed out that this is predominantly a commercial area and based upon the rear shed is set up in conjunction with the septic, it is obvious it can't be used as a garage.

This will not have an adverse effect on the neighborhood, and will be aesthetically pleasing.

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

**MOTION CARRIED**

Meeting adjourned at 6:46 p.m. with a motion by Patrick Krey.

**MOTION CARRIED**

Amy Major  
Senior Clerk Typist