

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday October 8, 2013
7:00 p.m.

Vice Chairman Ryan Mills called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Vice-Chairman Ryan Mills	David D'Amato
Patricia Burkard	Jonathan Hickey
Gregory Thrun	

Zoning Board of Appeals members absent: Chairman Daniel Michnik

Town Officials present:

Director of Community Development James Callahan
 Deputy Town Attorney Steven Bengart
 Councilman Peter DiCostanzo
 Councilman Bernard Kolber
 Councilman Robert Geiger

Other interested parties present:

David Fox	S. M. Guglielmo
Andrew J. Smith	Karen M. Horn
Kevin Howard	Sandy Klingensmith
Sean O'Grady	David Blanchard
LuAnn Bondanza	

Motion by David D'Amato, seconded by Gregory Thrun, to **approve** the minutes of the meeting held on September 10, 2013, as written.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Old Business**Appeal No. 1**

David Fox
Residential Single Family

Requests the Board of Appeals approve and grant a 992 square foot variance to allow for a detached accessory structure totaling 1,712 square feet. Previously existing 759 square foot snow-collapsed accessory structure to be replaced with 659 square foot accessory structure, abutting an additional existing 1,053 square foot detached accessory structure at 4955 Shimerville Road.

Appeal No. 1 is in variance to § 229-55.

DISCUSSION:

Mr. Fox said he contacted an artist and had him do some drawings of various options. He submitted color images depicting five scenarios on how the structure and landscaping would appear. Those images include features such as fencing, trees planted 3' apart and 5' from the structure and other floral and vegetative landscaping. The images are on file and labeled Exhibits 1 thru 5. The proposed structure is 11' 5" high.

Mr. Fox said the fence would be clapboard that would match the existing building; the fence would be about 3' away from the structure. Mrs. Burkard asked what the additional landscaping will cost. Mr. Fox said it will be less than \$1,000. The existing garage is 30' long; the proposed structure is 40' long.

Mr. Hickey thanked Mr. Fox for the work he put into this proposal. Mr. Hickey asked for details on the type of trees Mr. Fox planned for the landscaping. Mr. Fox said he is considering the flowering Pear Tree because they grow to a certain width and then they grow up. He will plant as many trees as is the length of the proposed structure which will probably be about 10 trees. Mr. Fox said the trees will be planted when they are about 6'- 8' high, it will take three years to get to the maturity of the tree at 12' high. The north side of the proposed structure is all brush. Mr. Fox prefers the option that shows the trees and the fence.

Mr. D'Amato also thanked Mr. Fox for the work he put into this re-submittal. Mr. D'Amato prefers the plan that shows the fence and the trees.

Vice-Chairman Mills said he appreciates the work Mr. Fox did too, the photos are very helpful. He asked who did the photo work. Mr. Fox said Darryl Kason did the photos; he is a graphic artist instructor at ITT Tech. Vice-Chairman Mills asked Mr. Fox if the Board made it a condition of the approval that the clapboard fence and the trees be installed per the depiction in Exhibit 2, would he be amenable to that. Mr. Fox said yes.

It is suggested that the applicant leave at least 5' between the trees, any closer and they will not survive.

Mr. D'Amato asked if the applicant will be repairing the existing structure at the same time he is installing the additional structure. Mr. Fox said yes.

Mrs. Burkard asked if the greenery on the Pear trees will cover up the metal structure. Mr. Fox said he does not know. Mrs. Burkard said these trees have a long trunk before you get to the leaves. Mr. Guglielmo, of 8808 The Fairways, is present and said he thinks it is a good looking building and he is in favor of this variance. He has lived in his home for about 10 years.

ACTION:

Motion by Jonathan Hickey, seconded by David D'Amato, to **approve** Appeal No. 1 under Old Business as written, with the following conditions:

- Per Exhibit 2, as placed in the file, a 6' clapboard fence will be installed.
- Flowering Pear Trees will be planted 3'- 6' apart along the entire length of the new structure on the southern side as depicted in Exhibit 2, as placed in the file.
- The conditions must be met by June 30, 2014, weather permitting.

ON THE QUESTION:

Vice-Chairman Mills said one reason this variance request is moving forward is because this structure was on the site previously and it was a natural disaster that caused its original demise. It is being replaced with a footprint that is smaller than the original. Mr. Fox has gone through great lengths to mitigate any negative perception that the pre-fabricated structure may present by adding the fence and the trees.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

New Business

Appeal No. 1

Andrew J. Smith
Residential Single Family

Requests the Board of Appeals approve and grant a variance for a second private garage on lot. Proposed garage is detached and 22' by 20' for a total of 440 sq. ft. at 4950 Pineledge Drive North.

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

DISCUSSION:

Mr. Smith is present and explained that he moved into the house three (3) months ago. Pineledge Drive North has no outlet; there are four (4) driveways within 50' of each other. One of those entry points is an easement on Mr. Smith's property which has a 24' x 24' blacktop turn around area. The difficulty in this area as far as through traffic or turning around creates problems for all four (4) families at the end of the street because there is no way out so people pull in driveways to turn around and exit the area. Mr. Smith said this turn around/easement area isn't going to be used any differently today than it would be in a year from now if the variance was granted. All he wants to do is put a detached garage on the side of the house; there is more than enough room to meet all the building codes. It will take vehicles off the street. When the families in that area have visitors sometimes they will park in the easement area, which is on

Mr. Smith's property. He told his neighbors he does not have a problem with that. There is limited visibility for the kids playing, so if he puts a garage and a driveway on that side it will open up the street and take two trucks off the street. He has three vehicles and a car cannot be stored on one side of the existing garage because the electrical panel for the house is on that side. There is a unique situation where someone has built a house on the boundary line and there is a concern for snow removal. The Town Highway trucks have to access that area and turn around, this will not change. Mr. Smith would like to take the easement area where the asphalt is and add 6' of asphalt to create a parking spot for people that use the easement area for parking now. It is approximately a 40' driveway with a 20' wide garage, it meets all the fire requirements, the structure will have overhangs and the construction grade will be above average. When everybody is parked in their own driveways he does not have enough room if someone's friend is parked in the easement area, they have basically restricted the end of the street. On the weekend there will be 6 or 7 cars within a 100' area parked on the street. That driveway and garage would open up the street and make it easier for people to see the turnaround from the parked cars and it would create an area where the kids can play. The visibility for the cars coming down the street would be greater.

There are several neighbor notification forms on file.

Mr. D'Amato asked for clarification on how building a garage will alleviate the congestion on the street. Mr. Smith said it will play a part in the parking spots for the four houses that are at the end of the street. The easement will be used for parking just as it has been for the past 20 years. Mr. D'Amato said the applicant is trying to change something that has been working for the past 20 years; he doesn't think the proposed structure fits with the neighborhood.

There is a letter dated October 8, 2013 from Deputy Highway Superintendent James Dussing to Jonathan Bleuer that reads, "I am familiar with the area in question. I'm not sure if the 'turnaround'-as we call it in the highway biz is actually Town property or not, but these are not uncommon around Town. On most dead end roads (or stubs), we pave an area at the end of the road for the snow plow to turn around safely without getting stuck or damaging private property. These areas are mutually beneficial in most cases because residents use them in the summer months for overflow parking and lost cars don't turn around in everyone's driveways. Example of these "turnarounds" can be found on roads such as Faber Lane, Bodine Road and West Avenue. There are probably in the neighborhood of 15-20 of these throughout Town. I have no issue with the resident putting a garage up and extending the driveway from the end of the road. I would only ask that something be put in writing for future reference in regards to homeowner allowing the Town to use this area for future use with the understanding that we will cover any damage we may cause as a result. We need to have access to that turn area to effectively plow that subdivision."

Mr. Smith said he is not intending to change the easement area or to use it any differently than it has been. As far as construction goes, he can put it on the other side of the house, which has a 30" grade over 25', take down a tree, dig up all the bushes and then tear up the whole side of the house to do the same thing on the other side of the house where there is 45' from the side of the house to the property line and achieve the same thing significantly simpler and create a safety net.

Mr. D'Amato sees a liability factor if the variance is approved, in such a way that if the applicant gives permission to park in the easement and then something happened, it's a liability issue and the applicant may be sued. Mr. Smith said the only liability is the snow plow hitting the grass. He has not thought about anyone suing him; he has a driveway on the other side of the house that someone could walk on and do the same thing. Mr. D'Amato said the neighbors are using the turnaround now, which is different from

him putting in a driveway extending from that turnaround. Mr. Smith said they can continue to park where they are parking now; they are not going to park in his driveway.

Mr. Hickey asked what the applicant plans on using the proposed structure for. Mr. Smith said he is going to park vehicles in it; lawn maintenance equipment will be stored in it along with lawn furniture and bicycles. Mr. Smith lives at the residence with his daughter and his fiancé. He has three vehicles, a 2013 Chevy Equinox, a 2013 Chevy Express cargo van and a 2013 Silverado. He cannot get all three vehicles in his driveway and have the kids play safely in the driveway. He keeps the van in the street and the cars on the side so the kids can go up and down the driveway with their bikes. The van is used for his business; he is a heating and air conditioning contractor.

Mrs. Klingensmith lives at 4960 Pineledge Drive North and said she and her husband are dead set against looking at the proposed garage, they don't think it will look right. With regards to snow plowing the snow eventually gets pushed to the end of the street and she ends up having to clear it out. There are also turn around issues at the end of the street. Mr. Hickey asked Mrs. Klingensmith if she has seen a rendition of the proposed structure. She said no. Mr. Smith said he does not have a rendering of the structure. Mrs. Klingensmith asked when this is supposed to happen. She has lived at this location for 18 years.

Kevin Howard, of 4955 Pineledge Drive North, is ok with the structure; his concern is the driveway that will take up a portion or the majority of the current turnaround. Currently the snow plows push the snow to the left of his driveway and they use the end of the turnaround to push the remaining snow. Sometimes a portion of Mr. Howard's driveway is blocked by the snowplowing, he is afraid if a portion of the turnaround where they put the snow now is taken away, it's just going to get worse. If a portion of the turnaround is taken up by the driveway the larger trucks that need to turn around in that area will end up using the resident's driveways and Mr. Howard does not want a multi-ton vehicle using his driveway a couple times a week. He has lived at this location just over a year.

Mr. Smith said the garage will have a 4' sidewalk all the way around, it will have architecturally approved siding, 4' x 12' patch, a 3' overhang in the back with a 9' x 7' garage door to take the riding lawn mower out. Mr. Smith said a 22' long snowplow blade is difficult to maneuver in this area. It appears as though the snow is not being piled in the same area all the time. Mr. Smith said this has nothing to do with Sandy liking his garage or not. Mr. Hickey clarified that, for Mrs. Klingensmith, it is about whether she likes the garage or not, she has lived there for 18 years, this is a legitimate concern. Mr. Smith said a couple times they blocked Kevin's driveway across the street with snow, this has nothing to do with the blacktop area. Mr. Smith said making that driveway and adding 6' is only going to create greater visibility coming down the street when his van is not parked right there in front of the house. Mr. Hickey asked for clarification on what Mr. Smith means by greater visibility. Mr. Smith said when people make a wrong turn and come down that street they do not know the turnaround is there so they end up turning around in someone's driveway. Mr. Hickey asked how often that happens. Mr. Smith said he saw it 4 times in 2 hours just recently. So widening the easement will create less obstruction on the street line coming down the road.

Mrs. Burkard is concerned with what the structure will look like. The proposed structure is separate from the house and she does not know how that will look in the neighborhood. She asked for clarification on the proposed driveway. Part of the easement will be the driveway; he is going 6' to the south. Mr. Smith said the easement is his property; it is an easement for highway purposes. Mrs. Burkard's questions whether the easement can be used for the applicant's own personal use. Mr. Smith said yes.

Deputy Town Attorney Steve Bengart asked if the applicant knows whose easement it is. It is assumed that it is in the right-of-way, if so the Town owns it, but that information is not clear at this time. The survey of the property dated May 21, 2013 is referred to and it appears that the black-topped area is noted as a temporary easement for highway purposes from Mapcover 2115. The easement area is 30' x 30'; however the black-topped area is less in size than that. If this is the Town's easement, it is noted that the applicant cannot touch that area, no matter what the Highway Superintendent says. Mr. Smith was told by another attorney that the easement was put there to grant the Town permission to put a utility truck there temporarily to work or to turn around or to check drainage; this was put in 45 years ago when the house was built.

Deputy Town Attorney Steve Bengart said he would suggest clarification on ownership of the easement because he does not want the Zoning Board of Appeals approving something on property that belongs to the Town, if that is the case here.

Vice-Chairman Mills asked the applicant if he is ok with his request being tabled. This will give the applicant the opportunity to provide a title search to the Town Attorney's office, or have the applicant's attorney contact the Town Attorney.

Mr. Smith does not have a problem with tabling the request; he thinks it is a logical approach. Deputy Town Attorney Steve Bengart suggested the applicant submit an architectural plan which would be helpful to the neighbors.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills, to **table** Appeal No. 1 for reasons discussed.

ON THE QUESTION:

Mr. Thrun said an architectural plan will help the neighbor's visual what the structure will look like. The Board also has to look at how the driveway will affect the easement.

Mr. Hickey would like to see the applicant talk to Mrs. Klingensmith and her family about his request. This is a small neighborhood and the neighbor's opinions are important. He noted that one neighbor has been there 20 years.

Mrs. Burkard asked if the applicant explored attaching the garage. Mr. Smith said he could attach it to the other side of the house without a variance, with the same layout.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 2

Sean O'Grady
Residential Single Family

Requests the Board of Appeals approve and grant a variance of 5' to allow for a 7.5' side yard setback. Applicant is proposing an addition to the principle structure at 8275 Garrock Road.

Appeal No. 2 is in variance to § 229-52(B).

DISCUSSION:

Mr. O'Grady is present and explained that he is looking to add a third bay to his garage and some space above for a bedroom. He wants to add space to his garage area, he has three boys with lots of toys and he wants to preserve the finish on his cars. He looked at building a shed but in order to be compliant with regulations the shed would be too far in the back of his property. There is a fourth bedroom that currently exists over the garage which will be turned into his office space. The fourth bedroom will go over the expansion garage.

Mr. Thrun asked if the neighbors understand it will be a two-story add on. Mr. O'Grady said yes he showed them the plans. There are three neighbor notification forms on file.

Mr. O'Grady said the siding for the proposed addition will match the house. He built the house 11 years ago and has lived there since.

Mr. Hickey asked if Mr. O'Grady tried to bring the request closer to code. Mr. O'Grady said he had an architect draw up the plans and they came up with what would be the most efficient use of a one-car garage. He plans on living in this house for a long time. The proposed garage will have rear entry, as well. There will only be concrete work up to the door.

Vice-Chairman Mills asked if the building materials will match the house. Mr. O'Grady said yes.

ACTION:

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 3

David Blanchard
Residential Single Family

Requests the Board of Appeals approve and grant a variance for a second private garage on lot. Proposed garage is detached and 16' by 20' for a total of 320 sq. ft. at 8300 West Point Drive.

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

DISCUSSION:

Mr. Blanchard is present and explained he has lived at this address since 1980 and has run out of room. He has to leave one vehicle parked outside in the winter time. He would like extra room to store some things he can't keep in his garage, like a motorcycle, a riding lawn mower, deck furniture and a couple bicycles.

Mr. D'Amato asked if the applicant could live with a structure smaller than 16' x 20'. Mr. Blanchard said he would have preferred to go larger so he would like to keep the 16' x 20'.

There are three neighbor notification forms on file. The neighbor across the street is hard to contact so Mr. Blanchard has not talked to him about the variance. He is on good terms with all his neighbors and he does not think any neighbor will have a problem with his request. The neighbor to the west has been there for about five years. Mr. Blanchard plans to live at this location for a long time. The proposed structure is a single-story garage, the same siding and architectural shingles that are on the house will be used for the materials on the proposed addition; it will be all vinyl siding, no brick work. The garage door on the proposed structure will match the existing garage door.

The Zoning Board of Appeals members review the plans that are on file. The existing garage is a 2 and half car, the proposed structure is smaller.

Mr. Blanchard said there will be a concrete floor on a pad and the builder said he could put a three foot ramp going into the garage from the driveway. It is not a pre-fabricated structure; it will be built on site.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 3, as written.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 4

Lu Ann & Timothy Bondanza
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance of 2' to allow for a 6' high fence located within the front yard setback for a total length of 160' at 10480 Miland Road.

Appeal No. 4 is in variance to § 101-3(C).

DISCUSSION:

Lu Ann Bondanza is present and explained she would like to have a 6' fence installed along Salt Road in the back corner of their house. They want to bring it out 3' from the house toward the back of the property, then go out towards Salt Road 40', turn right along Salt Road, take it 110' toward the back of the property, then a few more feet toward the pole barn. The fence installer is going to angle it down because the height will be dropped and the type of fence will be changed to a 4' black chain link which will go all along the back, which is approximately 96', it will connect with the back of the pole barn and will come out at the front corner of the pole barn and connect to the corner of the rear of the house. The

area along Salt Road, which is considered the front yard, would be cedar wood that would be special ordered, 6' high, board on board. It will be stained in the Spring. There are 2 reasons she wants the 6' fence as opposed to the 4' fence, one is for privacy from Salt Road. The traffic that goes down Salt Road is 55 miles per hour, plus there are construction vehicles and passenger vehicles, atv's and motorcycles. They want the fence to block out some of the visual impact; they would like to extend their outdoor living area. They also have pets and want to keep them contained. They put a deck in the backyard that comes up from the ground 2', so when they are sitting on it they would like the extra 2' fence just to help with the privacy. They don't want to block out the neighbors and that is the purpose of the chain link. They have plans to install pedestrian gates. There is a concern regarding the patio double door in the back of the house; there are limited ways to secure that door. The way it was installed you cannot put a piece of pipe in to keep the door from being jammed open. So they are trying to take the visual impact of that door away from the traffic by installing the fence.

There are four neighbor notification forms on file and a letter from a neighbor supporting the variance.

Mr. Thrun said he thought the applicant would want to continue with the cedar look of the fence as opposed to changing the style to chain link. Mr. Bondanza said it would be more expensive and it is not their intention to make it a fort. They are wide open to Salt Road and would like privacy from that traffic.

ACTION:

Motion by Patricia Burkard, seconded by Gregory Thrun, to **approve** Appeal No. 4, as written.

ON THE QUESTION:

Mr. Hickey noted the unique situation of the house on a corner in the exposed manner that it makes a fence that is 2' out of code very reasonable. It does not impact the neighborhood negatively. There is also a security issue that will be addressed with the fence.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Meeting adjourned at 8:28 p.m.

Carolyn Delgato
Senior Clerk Typist