

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, December 13, 2022

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	Patricia Burkard

Town Officials present:

Junior Planner Andrew Schaefer
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Other Interested Parties Present:

Brad Kern	Barbara Beckinghausen	Erwin Beckinghausen	Andrew Ocque
Alt Henning	Linda Henning	Mary Lou Brazell	Richard Brazell
Pauline Callan	Bob Callan	Nick Ettaro	Penny Favale
Steve Favale	Jonathan Schierer	Barbara Mullins	Joe Delmonte
Joyce Normandin	Marisa Samson	John Samson	Leslie Evans
Tom Evans	Nolan Evans	Jonathan Harding	Nancy Turner
James Turner	Dennis Fiegel	George Gardner	Sam Boulos
Joseph Vitthuhn	Richard Cartwright	Pat Vitthuhn	Art Pogorzala
Karen Leavy	Ronald Leavy	Loretta Syput	Megan McHugh
John McHugh	Bob Koerner	Anne Koerner	Ed Nesselbeck
Mike Arnold	Barbara Arnold	Marcus Miranda	Donn Geyer
Tim Jakubur	Pat Sheedy	Sean Hopkins	Andrew Harbison
Lori Harbison	Patricia Harding	Dallas Huddleston	Kristine Miranda
Denise Torrey Gonzales			

Motion by Gerald Drinkard, seconded by Richard McNamara, to **approve** the minutes of the meeting held on October 11, 2022.

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

MOTION CARRIED

OLD BUSINESS

Appeal No. 5 (from the 11-8-2022 meeting)
 Bevilacqua Development, L.P.
 Commercial

Town Code Reference;

- 1) §229-126(D) (1) (f)
- 2) §229-87 (F) (2)
- 3) §229-126 (D) (1) (e)

Applicant requests a variance:

- 1) to allow third stories on three multiple-family housing buildings; and
- 2) of 6' to allow two 51' tall buildings (45" roof height, 6' parapets); and
- 3) to allow a building containing more than 4 multiple family units without an in-building commercial component; located at 6625 Transit Road.

DISCUSSION:

Sean Hopkins representing the applicant, and Pat Sheedy from Carmina Wood were present to further represent the request.

Referring to the Zoning Board of Appeals meeting from November 8, 2022 when this item was tabled, Mr. Hopkins stated that he will focus on providing the new information.

Mr. Hopkins gave a brief overview of this project, noting that at full buildout, 18.7 acres which is approximately half of the site will remain undeveloped as permanent open space.

Mr. Hopkins stated that the Planning Office provided him with copies of comments received by various residents. While some of them were relevant to the requests for area variances for tonight's meeting, many of them are issues that don't pertain to this board, specifically those regarding traffic.

The Negative Declaration that the Planning Board issued after an approximately two-year coordinated environmental review process including input from the New York State Department of Transportation (NYS DOT) thoroughly evaluated all traffic impacts associated with this project.

Mr. Hopkins briefly reviewed the location of the new traffic signal that will be placed at the intersection of Transit Road and Deer Creek Road, noting that access on to Miles Road also does not fall under the jurisdiction of the Zoning Board of Appeals.

Mr. Hopkins noted that they do recognize the current traffic concerns on Miles Road.

Mr. Hopkins reiterated that the only issues in front of the Zoning Board tonight are the three variance requests, which he reviewed.

Mr. Hopkins reviewed the concerns that the Zoning Board of Appeals raised at the previous meeting.

Mr. Hopkins explained that the plans presented both at the November 8, 2022 meeting as well as tonight's meeting are not meant to be the final plans for those buildings. In their supplemental letter to the Zoning Board of Appeals, it was acknowledged that they plan to use up-scale and high-quality architectural materials.

Mr. Hopkins referred to the topic of parking for the 28-unit building that had come up at the previous meeting, stating that while not under the jurisdiction of the Zoning Board, they did continue to review it.

Mr. Hopkins explained that in order to provide additional greenspace, the parking for that building will be either below-grade or partially below-grade.

Reviewing the Zoning Board of Appeals criteria for granting variances, Mr. Hopkins stated that they do not believe granting these variances will have any adverse effect on the community, but instead will be beneficial.

Mr. Hopkins stated that while there are alternatives that would avoid the need for these variances, they would not allow the applicant to achieve the benefits.

Mr. Hopkins showed and discussed an alternative plan that was based on discussion from the Zoning Board of Appeals at the November 8, 2022 meeting. This plan was drawn to show what they could do at the same density with the same scope of project without area variances 1 and 2.

The footprint of the two 2-story mixed use buildings would increase dramatically from approximately 22,750 sq. ft. to 42,350 sq. ft. with the length of the buildings increasing to almost 470 ft. along Miles Road and the northern portion of the site.

Additionally, the 3-story multi-family building via 7 additional 2-story four-unit multi-family buildings, which would come at the expense of permanent open space along the northern portion of the project site.

Mr. Hopkins reviewed additional detriments that would come at the expense of the project if the plans were changed based on the discussion of the Zoning Board from the previous meeting. These include increased parking spaces based on increased commercial space, and decreased permanent open space.

Impact in jurisdictional wetlands on the site would increase from 3.46 acres to 5.5 acres.

Noting that while discussion of traffic impacts falls outside of the jurisdiction of the Zoning Board, Mr. Hopkins referred to the Traffic Impact Study that the Planning Board reviewed in detail.

There are no floodplain impacts proposed.

The Department of Environmental Conservation (DEC) has reviewed this proposal and has previously issued a Water Quality Certification Approval, which will guide in the success of hopefully obtaining wetland permits from the Army Corp of Engineers.

Mr. Hopkins stated that the applicant will be planting extensive vegetation along with the large amount that will remain on-site, and maintaining all of it in perpetuity.

Mr. Drinkard noted that at the first meeting with this project in 2008, this area was down zoned from Major Arterial by the Planning Board. At that time when this change was made, public participation weighed in heavily with support of down zoning to Commercial, away from the possibility of a major retailer going in to the property then zoned Major Arterial.

Mr. Drinkard added that his biggest takeaway from the alternate plan that Mr. Hopkins and Mr. Sheedy presented to the Zoning Board is that he prefers putting as many people as possible in a smaller footprint. This gives the option to plan for walkability, parking, greenspace, and other options with more space. Mr. Drinkard asked if the buildout would be different with this alternate option.

Mr. Hopkins stated that the buildout could be slower, as the amount of commercial space would be doubled.

Mr. Drinkard asked about the buildout for the residential component with the alternate plan that was presented tonight.

Mr. Skaine asked about the 51 ft. height of the mixed-use buildings.

Mr. Hopkins explained that the actual roof height is 45 ft. but the parapets add 6 ft, extending the total height to 51 ft. The additional height would not be occupied space, but simply decorative in nature. This would only pertain to the front area of the building, and would not extend back.

If the variance is not granted, they would do a flat roof of 45 ft., but it would not look as nice.

Chairman Mills asked about the third prong of the request, and if there have been any market studies to corroborate the need for more residential than commercial.

Mr. Hopkins responded that the 28 units they are planning on would still remain without the variance, but instead would be spread out over more area. It would not compliment the mixed-use community characteristic of the proposed project.

Chairman Mills asked for additional evidence that there is not a demand for more commercial component to the proposed project.

Mr. Hopkins noted that merely driving through town and observing the mixed-use buildings, there is a decent amount of vacant first-floor commercial space.

Mr. Hopkins reviewed some of the neighbor comments that they have received all the way back from 2008 when this project was originally presented. These comments do not pertain to the variance requests before the Zoning Board, nonetheless Mr. Hopkins acknowledged them.

Mr. Hopkins explained that they will continue to engage with neighbors, and to the extent that they are able to address their concerns, they will make every effort to do so.

Mr. Hopkins stated that according to code, they need to have some access on to Miles Road. It's not by choice, it is per code.

Mrs. Burkard noted that after seeing the alternate plans of what it would look like if the variances are not approved, she believes the original proposed plans is a better choice, and will look much better.

In regards to Public Participation, the following residents spoke:

1. Ed Nesselbeck of 8070 Miles Road:

- recognizes that the original plan is better than alternate plan
- requests the Zoning Board to deny the requests
- opposition to request due to traffic
- town zoning regulations are concerning
- Miles Road cannot support more traffic, despite what some study says.

2. Barbara Arnold of 8185 Miles Road:
 - discussed traffic concerns
 - requests the waivers be denied
 - wants the town to do another traffic study
3. Andrew Harbison of 8215 Miles Road:
 - opposed to the variances
 - nobody is giving the time of day to the opposition to the project
 - son had an accident in 2017 on Transit Road, states that officer at the time said there will never be a light at the intersection of Miles Road and Transit Road
 - there are rules and regulations for a reason, and they shouldn't be changed
4. Mary Lou Brazell of 8085 Miles Road:
 - appreciates the details and changes discussed tonight, albeit difficult to understand
 - important question – at what point is enough, enough
 - the Farmington Woods subdivision hit them hard, and took away the safety of their country road
 - reviewed all of her issues and concerns with the proposed project, primarily safety for all in the Miles Road community
5. Steve Favale of 8115 Miles Road:
 - concerns with traffic
 - November meeting, he requested all construction traffic uses Transit Road only
 - housing built by a different developer, if all construction vehicles use Transit Road, will residential developer also abide by those rules

Mr. Bengart interjected, stating that if this project moves forward tonight, those matters will be handled by the Planning Board, not this board.

6. Andrew Ocque of 8156 Miles Road:
 - moved to the area to enjoy the atmosphere and country, has two little school-aged kids
 - Miles Road is an issue now, and this proposed project hasn't even begun
 - referred to the building on the other side of Transit Road that has not filled the commercial space that they have available
 - proposed project is too big for the area, it won't get filled
7. Jonathan Scherer of 8061 Clarherst Drive:
 - recently in an accident on Transit Road, traffic is a concern
 - what will this project look like in the future, may bring crime to the area
 - reject the proposal, taking concerns in to consideration
8. Joyce Normandin of 8360 Stahley Road:
 - has seen a tremendous increase in traffic while residing here
 - proposed project is too dense and too high
 - respectfully asks the board to consider the families in the area and vote no on the proposed development

9. Penny Favale of 8115 Miles Road:
 - asked why the variances are necessary, why can't they build within the confines of the current zones
 - the applicant doesn't have to do either of the plans that they have presented, they are choosing to in order to make the money
 - there will be many impacts to the environment from the 3-story building that is proposed
10. James Turner of 8125 Centre Lane:
 - wants it all to be declined
 - where will the school buses come from for the new families, it will be Miles Road
 - the additional volume of families there is a huge concern for safety
 - the additional families will be out and about and impact safety
 - wants it to be controlled in a way that is old-fashioned and not over crowded
11. Megan McHugh of 8080 Miles Road:
 - involved with the Clarence Chamber of Commerce and appreciates small business opportunities being brought to the area
 - the vacant properties across the street on Transit Road are the reasons she is not in favor of this project
 - Miles Road has no sidewalks or traffic lights
 - the variances are the reason for the density and traffic, without the variances the density and traffic would be regular
12. Joe Vitthuhn of 8260 Clarherst Drive:
 - not opposed to development but a project of this size will have issues
 - access to Transit Road from Miles Road is a challenge now, and will only get worse
 - Transit Road is a mess now and won't get better with this project
 - project should not have access to Miles Road and should be downsized significantly
13. Kristine Miranda of 8175 Miles Road:
 - desired density is what the developers and architects want, not the Town of Clarence
 - disagrees with the approach of "if you don't do it this way, we will take greenspace away" that the applicant is using
 - too much development is already vacant, adding more will not help
 - traffic concerns
14. Anne Koerner of 8050 Miles Road:
 - reviewed her life on Miles Road
 - feels like being held hostage with the project size and greenspace
 - too many vacancies and houses for sale in the area, doesn't see this being populated
 - if it has to be done, it can be done on smaller scale as to not effect Miles Road
15. Nancy Turner of 8125 Centre Lane:
 - too big of a project, density too high
 - overwhelming density for the amount of people
 - if the applicant follow the rules without variances it would work out better

- traffic is horrible, there are no sidewalks

16. Barbara Beckinghausen of 8685 Stahley Road:

- previously petitioned the county to slow the speed limit from Miles Road to Conner Road, but they denied it
- traffic is terrible now; the project will make it worse
- 75% of the residents on her portion of the road are 70 years old and older
- nothing has been mentioned about retention ponds or where the water will go. Ransom Creek is already an issue for flooding

17. Laurie Harbison of 8215 Miles Road:

- talked about bussing and transportation from when her children were in school from years past
- development in Clarence when her grandfather owned the property and erosion issues from work done back then, and anticipates more of the same from this development
- visually impaired, attempts to walk her dog on Miles Road but it is a challenge
- this project was originally to have two access roads on to Transit Road
- consideration should be given to the residents that have lived there for many years and pay taxes as opposed to the needs of an incoming developer
- what is the assurance that the property won't be converted in to more townhouses and more 3-story buildings

18. Robert Callan of 8075 Miles Road:

- is this just about a variance or is it the entire project

Mr. Bengart interjected, saying that the project has not been approved. What has been approved is the State Environmental Quality Review Act (SEQRA), and some of the issues that have been brought up at tonight's meeting may have already been resolved.

However, as to the overall project, there is still a lot of process left. The only thing being decided tonight are the three issues on the agenda.

Mr. Callan continued:

- say no to the variances
- talked about the wildlife residing on the vacant lot and greenspace on the property now
- piece by piece the clear space has gone away
- traffic now is brutal; he can't imagine what it will be like after hundreds of new cars are added
- dead set against the variances and the entire project
- Clarence is becoming another Amherst

19. Jonathan Harding of 8075 Centre Lane:

- involved in an accident shortly after he began driving at the age of 16, after making a left on to Transit Road, he will not do it anymore
- takes alternate routes to go to the light, avoiding pulling out on to Transit Road

20. Dallas Huddleston of 8065 Centre Lane:

- agrees that the traffic is and will be an issue
- too many storefronts are vacant, should not add more

- what happens if he wants to have a 3rd story in his house someday
- what will the applicant do for them? Traffic light? Sidewalks? Developer is not doing anything for the people

21. Leslie Evans of 8220 Clarherst Drive:

- has older kids but a lot of young families that have recently moved in to the neighborhood
- traffic has been diverted down Miles Road
- that area of Transit Road is horrible, with near misses all of the time, and no enforcement
- surprised that there is no concern for safety
- is the Traffic Study available for public viewing

Mr. Bengart responded that the Traffic Study is available to view in the Planning Office.

22. Tim Jakubus of 8105 Miles Road:

- asked that the board votes no to the variances
- every variance approved in the Town of Clarence is ruining the nature of the town. The rules were put in place at the time, to keep Clarence the way that it is and is meant to be.

23. Denise Torrey Gonzales of 8130 Miles Road:

- density is too much for the area with this project
- infringing on what the Town of Clarence is all about
- concerned about traffic being close to her home, traffic buses and the additional families and traffic this will bring to the area
- asked that they vote no on the variance

At this time, Public Participation was closed for this item.

Mr. Krey read the names of residents that have submitted correspondence regarding this issue, who have not had a chance to speak publicly:

- Sylvia Moran of 8049 Centre Lane
- Chris Clark of 8051 Centre Lane
- Sharon Schultz of 6500 Poplar Court
- Diane Chase
- Brenda LiPuma of 8116 Clarherst Drive
- Thi Hoang Ha Nguyen of 8165 Miles Road
- Lori Sheppard
- Paul Schreiber of 8100 Centre Lane

These residents all spoke of traffic and safety concerns, stating that they are opposed to the project.

Chairman Mills read additional correspondences from residents who also raised concerns about traffic, quality of life, and overall objection to the proposed project:

- John Russo of 6515 Poplar Lane
- John and Sissy Holdach of 8125 Miles Road
- Sue Freeman Russo of 6515 Poplar Hill Lane
- Phillip Andreozzi of 6475 Poplar Hill Lane
- Sue Williams of Centre Lane

- Mark Metcalf of 6525 Poplar Hill Lane
- Don Brownschidle of 8110 Miles Road
- Sally Clark of Centre Lane
- Patricia Harding of 8075 Centre Lane
- David Willis
- Patricia

Mr. Hopkins returned to address the questions and concerns of the residents that he has not already addressed.

Responding to the statements that the Zoning Board should uphold the zoning law as is and not grant any variances. This board by law is the Zoning Board of Appeals and they exist to consider variances. Unlike other bodies, they are governed by very specific criteria, as is every other Board of Appeals in every town and city in the New York State.

Mr. Hopkins reiterated that they are not requesting an increase in residential units, the alternate plan was developed upon request of the Zoning Board of Appeals. The applicant is not threatening to either approve the variances or they will automatically increase units and decrease greenspace.

Mr. Hopkins stated that nobody is being dismissive of traffic concerns, the residents in this area know the traffic better than he and the applicant do. It is not an issue in front of this board tonight.

In regards to the comments that the proposed project is not geared towards families. There is a residential subdivision component of the project, this type of project is not a new concept for the Town of Clarence.

Mr. Hopkins commented on the concern of the back of this parcel which is designated open space becoming a commercial or multi-use project in the future, noting that zoning dictates that it can only be residential single-family.

Mr. Hopkins stated that he believes they have conclusively identified they deserve these variance requests.

Neighbor Notifications are on file.

ACTION:

Motion by Gerald Drinkard, seconded by Patrick Krey to **approve** Appeal No. 5 under Old Business

ON THE QUESTION:

Mr. Drinkard stated that the applicant has shown the public sufficient evidence, and after much in depth and detailed discussion with the Planning Board, he believes that the density of the residential component with fewer buildings is a better plan.

Mr. Krey stated that he sympathizes with many of the concerns of the residents, as he has similar feelings when he sees developments going up within the Town of Clarence. As stated earlier tonight, the Zoning Board is only looking at the three variances in front of them tonight, and under specific criteria.

Additionally, Mr. Krey noted that he is voting to approve the variances, he does not believe in comparison of the two proposals, the variances will not create an undesirable change.

Mr. Krey also stated the following:

- in terms of the height of the building, that is an aesthetic request to improve the street view.
- in terms of the three stories, even though it increases the height of the structure, it does decrease the overall space that is used, which allows for more greenspace in the overall layout of the proposed project.
- in terms of the building being more than 4 multi-family components, the applicant sufficiently explained the desire for them.

Chairman Mills noted that the Zoning Board of Appeals is only required to look at the three specific criteria in front of them tonight. Allowing more greenspace is the optimal outcome for their approval of these variance requests.

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

MOTION CARRIED

Mr. Bengart confirmed the motion is passed with all three variances approved unanimously. This will go back to the Planning Board where most of tonight’s questions still need to be resolved. This is not the last time you can be heard, but it is the last time you can be heard on these three issues.

Appeal No. 1

Richard Budde
Traditional Neighborhood District

Town Code Reference;
§229-126 (E) & §229-59 (D)

Applicant requests a variance of one residential unit to allow for a total of three residential units without an in-building commercial component located within the existing principal structure at 10749 Main Street.

Mr. Bengart recused himself for this item.

DISCUSSION:

Richard Budde was present to represent and further discuss his request.

Mr. Budde stated that it is already a two-unit building, he is looking to add another one. He would like to add an additional dwelling space. He is not adding anything to the structure, there are currently 4 access points to the building, he would not add anything structurally.

Mr. Budde stated that he is looking to make the unit a short-term rental, they currently have one unit that is an AirBnb, which is similar to what they would like to do with the additional units.

Mr. McNamara asked which unit Mr. Budde is adding.

Referring to a document titled “Existing Floor Plans A1” as Exhibit A, Mr. Budde responded that Unit 3 is the one that he would like to add. He will only need to close off a wall, everything else is already existing.

Construction has already begun when he applied for variance, based on a discussion with a Building Inspector.

Discussion continued regarding where Mr. Budde resides, and the remaining units for the project.

Mr. Budde explained that the Town of Clarence still needs to approve and additional short-term rental for this unit. If he is unable to, he will make it a long-term rental.

Mrs. Burkard with clarified with Mr. Budde, the future of unit 1, unit 2 will be a short-term rental, and unit 3 will be a studio apartment, also a short-term rental.

Mrs. Burkard asked Mr. Budde if he doesn't get enough business with the short-term rentals, will he then make them long-term rentals.

Mr. Budde responded no; he will keep them short-term, adding that there will be less impact on the neighborhood doing short-term rentals.

Mrs. Burkard asked how many parking spaces will be provided.

Mr. Budde responded that there is over 30 ft., so there should be enough for 3 vehicles.

Mr. Budde stated that he'd like to make the exterior of the building match the colors, materials, and characters of the buildings around him.

Mrs. Burkard asked Mr. Budde if the building located behind this parcel is his.

Mr. Budde responded no.

Mrs. Burkard asked Mr. Budde if he plans to do anything with the parking lot, as it is an eyesore.

Mr. Budde responded that they just purchased the building but plan to blacktop the entire area instead of stone.

Chairman Mills asked Mr. Budde how long he has been renting the one unit, and how has the occupancy been.

Mr. Budde responded that he has been renting it out since June, and occupancy has been strong, they have been surprised with how often and many renters they have that want to use it.

Chairman Mills asked Mr. Budde if the short-term rental was denied, what would he use the space for.

Mr. Budde stated that he would still have the two AirBnb units.

Discussion continued regarding the rental time of the units.

Mr. Krey asked Mr. Budde if this is the only rental property that he owns.

Mr. Budde responded yes. He lives five minutes from this property, and also owns and operates a business in Clarence.

Mr. Krey asked for clarification on the short-term rental process.

Mr. Schaefer explained that it is done through the Planning and Zoning office, there are many criteria that must be met. After that, a permit is issued for one year, then needs to be updated each year.

Mr. Drinkard reviewed what has been asked thus far, for clarification, specifically the access points.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

Mr. Drinkard asked about fire code and access.

Mr. Schaefer stated that fire code inspection applies to each unit, not just the building as a whole.

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine to **approve** Appeal No. 1 as written

ON THE QUESTION:

Chairman Mills stated that there is no change being implemented to the structure of this property, aside from simply putting up a wall.

Chairman Mills added that there is ample parking, and there will not be an undesirable change to the community.

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

MOTION CARRIED

Appeal No. 2

Samer Boulos
Residential Single-Family

- Town Code Reference;
- 1) §229-55 (H)
 - 2) §229-55 (H)
 - 3) §229-55 (E) (1)

Applicant requests a variance:

- 1) to allow a secondary detached garage; and
 - 2) of 160 sq. ft. to allow a 360 sq. ft. detached garage; and
 - 3) of 4 ft. to allow a 1 ft. side yard setback for a detached garage;
- located at 6371 Bridlewood Drive South.

Town Attorney Steven Bengart returned to the meeting.

DISCUSSION:

Mr. Boulos was present to further explain his request and answer any questions.

Mr. Boulos added that they have a family of five, they are growing out of their current garage space due to all of the sports equipment, lawn mower, snowblower, etc. They need additional storage for other items and potentially the car as well.

Mr. Boulos stated that variance request No. 2 is actually for 429 sq. ft., not 360. He is changing the depth of the garage to 20 ft. rather than 18 ft. that he originally requested.

Mr. Bengart stated that in order for the applicant to have his variance request changed, the item would need to be tabled at tonight's meeting, and rescheduled for another meeting with the updated and proper information. This way anyone that has any issues with the request has the ability to speak their concerns.

Mr. Schaefer noted that as long as the application and supporting documents are submitted to the Planning and Zoning Office in a timely manner, Mr. Boulos would be placed on the agenda for January.

Discussion continued regarding tabling this request.

Mr. Boulos asked to be heard on the original variance, then request to be tabled so that he has all of the necessary information for when he reapplies.

Mr. Boulos stated that he is requesting this variance based on needing more space.

Mr. Skaine stated that when he visited the applicant and the site, while it was well marked, it was for 18ft. and not the updated 20 ft. that the applicant is now requesting.

Mr. Skaine noted that Mr. Boulos will be removing the chain-link fence, and replace it with a new fence on the left between the building and the neighbor's house.

Mr. Boulos stated that his neighbors on either side are ok with his request.

Mr. Krey stated that one of his major concerns is the street view, and due to the existing garage, Mr. Krey does not feel that the proposed garage will be an issue. Mr. Krey requested that when Mr. Boulos returns for the next meeting, that he also includes some examples of what the proposed garage will look like.

Mr. Boulos referred to a photo he brought of the house located at 6152 Bridlewood Drive South which also has an additional garage similar to what he is requesting. This photo was marked Exhibit A.

Chairman Mills asked Mr. Boulos if he has explored the idea of attaching the garage to his principal structure via a breezeway or some other method.

Mr. Boulos responded that attaching the structure would not be beneficial to him, because of the cost.

Chairman Mills stated that while he understands there would be additional costs, the Zoning Board is asked to look at is whether there will be an undesirable change in the character of the neighborhood. While Mr. Boulos has provided one example of a detached garage, Chairman Mills noted that because it is in black and white, it is difficult to depict what it looks like.

Mr. Boulos responded with a brief description of what the proposed garage will look like.

Chairman Mills asked Mr. Boulos to include photos of the gate that Mr. Boulos has referred to when he returns. Additional photos will assist with helping the Board understand the aesthetics of the proposed requests.

Chairman Mills reviewed the documents that Mr. Boulos included with his application, and asked Mr. Boulos if he plans to purchase his shed from TuffShed. Mr. Boulos responded yes, but if they do not have the size that he wants he will have to build it himself. Mr. Boulos added that the front of the shed will be white vinyl like the side of his house, and not brick like the front of his house.

Mr. McNamara stated that he has concerns with variance request no. 3 on this application. 1 ft. from the property line is too close to the neighbor, and drainage also becomes an issue.

Mr. McNamara added that all of the structure within the 5 ft. property line is not fire rated.

Mr. McNamara suggested moving the proposed garage back and over 5 ft., would be a preferred location.

Discussion continued regarding the location of the proposed garage and alternate locations.

Mrs. Burkard stated that she is concerned with the proposed structure being all white. She asked Mr. Boulos if he would consider adding brick to match the house.

Mr. Boulos responded that he feels the proposed structure being all white will look better, more of an extension of the house. The fence will be white as well, and Mr. Boulos believes it will all blend in together.

Discussion continued regarding concerns with the proposed location situated too close to the property line.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

Chairman Mills reiterated the concerns of the board members regarding prong number 3 of the variance request, and suggested that Mr. Boulos comes back with alternate options.

Chairman Mills noted the concerns with the aesthetics of the proposed structure, suggesting different options which include a brick façade to match the front of the house. This will help to not make the structure resemble a large shed.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara to **table** Appeal No. 2.

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

MOTION CARRIED**Appeal No. 3**

Dominic & Barbara Piestrak
Residential Single-Family

Town Code Reference;

- 1) §229-19 (A) (1)
- 2) §229-19 (B)

Applicant requests a variance:

- 1) to allow more than 25% of the net floor area of the home to be used for the occupation; and
- 2) to allow more than one non-resident assistant to be employed in the principal building;

all for the purpose of operating a customary home occupation (residential sales office) in a newly constructed single-family residence located at 5492 Waterlefe Drive.

DISCUSSION:

Donald Powell, attorney for the applicant was present to represent their request.

Mr. Powell noted that the variance requests are exactly as stated. Mr. and Mrs. Piestrak own and run various subdivisions in town, and are looking to construct a new home with an office.

Mr. Drinkard asked if the person who works there will ever sleep over night.

Mr. Powell responded no.

Mr. Drinkard stated that he does not care to have a residence and a business mixed together in that neighborhood, asking whether Mr. Piestrak has an advantage to having a sales office in his house.

Mr. Powell responded that it is not actually a sales office, but more of a design office. They sell the parcels by going to the sites themselves, and selling the homes that are constructed.

Mr. Drinkard asked if there will be any external lighting or billboards.

Mr. Powell responded no.

Mr. Drinkard asked how long the proposed business office will last.

Mr. Powell stated that Mr. Piestrak is getting up in age, and he is unsure how long he plans to be active with the business.

Mr. Drinkard responded that is not a good answer.

Mr. Powell stated that he does not know how long Mr. Piestrak plans to keep working, so he doesn't have a specific answer for that question.

Mr. Skaine stated that he is concerned with the number of people that may be there at one time, and how many vehicles.

Mr. Powell responded that there are not necessarily people coming to his office, they have a secretary that would be working there. Occasionally a builder or designer will come to the office, but not on a regular basis.

Mr. Powell added that Mr. Piestrak is having a curved driveway installed, and he does not plan on ever having any more than 2-3 cars there at once.

Mr. Skaine asked what the neighbors think of this proposed plan.

Mr. Powell responded that they have been notified.

Mr. Schaefer stated that Neighbor Notifications are on file, no comments were received.

Mr. Skaine stated that he does not agree with this plan because there will be someone in this house 5 days a week.

Mr. Krey asked Mr. Bengart if they were to authorize this request, would they be able to tie it to the current owner, and not the land.

Mr. Bengart responded yes; it should be tied to the applicant not the land.

Chairman Mills asked if they can put a time period on a condition for the variance.

Mr. Bengart recommends the time period goes until the property is transferred.

Mr. Drinkard asked if this would be appropriate for a Temporary Conditional Permit.

Mr. Bengart responded that this board does not have the authority to do that, and he is comfortable with it being done via a variance, with the appropriate time frame.

Mr. Krey asked if this home will be a model home.

Mr. Powell responded no.

Chairman Mills asked for clarification on what type of office this will be, is it characterized as a sales office with customers coming in.

Mr. Powell responded no, generally the customers make appointments to see the homes that they are looking to purchase. The product sold at the office would be building lots, there will not be any customers coming to the office at any form of regular basis.

Chairman Mills asked about prong number 1 of the variance request, and asked if more than 25% of the home will be used for this office space.

Mr. Powell responded yes, there will be one secretary and may be occasional visitors dropping off or picking up.

Chairman Mills asked Mr. Powell what the total square footage of the office will be.

Mr. Powell responded that he does not know.

Chairman Mills noted that the basement floor plan was submitted with the application, which they will mark as Exhibit A.

Chairman Mills asked where Mr. Piestrak's current office is.

Mr. Powell responded that it is in Spaulding Green.

Mr. Krey asked if Mr. Piestrak got a variance for his current office.

Mr. Bengart responded that he did not get one, whether he should have, is a different question.

Mr. McNamara noted that this is a ranch house, and asked if they will be utilizing the basement for the office area.

Mr. Powell responded yes.

Mrs. Burkard asked if this is a model home.

Mr. Powell responded no.

Mrs. Burkard asked what the purpose is for the bedrooms in the basement.

Mr. Powell responded that Mr. Piestrak has planned the home around future tenants, knowing that it won't always be utilized as office space in the basement.

Discussion continued regarding the people that will be coming to the home.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Patrick Krey, seconded by Richard McNamara to **approve** Appeal No. 3 as written with the following condition:

- the variance approval is tied to Dominic and/or Barbara Piestrak, and once the business closes, or the property is sold to a new owner, the variance ends and the business ceases.

ON THE QUESTION:

Mr. Bengart asked the applicant if he has heard, understands, and agrees to the condition.

Mr. Powell responded yes.

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

MOTION CARRIED**Appeal No. 4**

Donn Geyer
Agricultural-Rural Residential

Applicant requests a variance of 15 ft. to allow a 10 ft. rear yard setback for a detached accessory structure (pole barn) located at 5635 Salt Road.

Town Code Reference;
§229-44 (F)

DISCUSSION:

Mr. Geyer was present to answer questions and further explain his request, stating that he went through the Building Department to get a building permit to erect a pole barn on his property. He was advised by a Building Inspector Jesse Gilbert that he needed to have a 5 ft. setback on both the back and side of the structure. Mr. Geyer added that he wanted more space, so he went with 10 ft. both behind and to the side.

Mr. Geyer stated that after he had the pad installed, the building inspector informed him that there had been a mistake, and he needed to have 25 ft. behind the structure due the Agricultural-Rural Residential zoning code.

Mr. Geyer noted that his lot is not as large as the new standard for that zone, therefore if he moved the structure forward 15 ft., it would greatly reduce the size of his backyard. This is why he has requested a setback variance.

Mr. Krey reviewed neighbor correspondence from Amanda Burns, representing John Burns of 5555 Salt Road. This will be placed in the project file as Exhibit A.

Mr. Drinkard asked Mr. Geyer if he has estimated how much it will cost to have the pad relocated.

Mr. Geyer responded that it would cost approximately \$2,000.00

Mrs. Burkard asked if there will be a driveway installed, and if not, how far will the proposed structure be away from the current driveway if placed in the correct location.

Mr. Geyer responded no, there will not be a new driveway installed. It will be approximately 40-45 ft.

Chairman Mills asked who installed the pad.

Mr. Geyer responded that it was professionally done by the contractor installing the pole barn.

Chairman Mills asked if the only reason Mr. Geyer chose this location is to keep more backyard space.

Mr. Geyer responded yes.

Mr. McNamara asked if the Town told him to do it 5 ft.

Mr. Geyer responded yes, the building inspector did.

Mr. Bengart asked Mr. Geyer if he intends to run any business out of the proposed structure.

Mr. Geyer responded no.

Mr. Drinkard asked if there is a memorandum on file stating that the variance was in contention due to a problem created by the building inspector.

Mr. Schaefer responded no, there is nothing in writing.

Mr. Drinkard stated that although we have the applicant's verbal statement that it is due to a building inspector's error, there should be something in writing which states this.

Mr. Drinkard added that there should also be something submitted in writing by the building inspector stating that it is his error.

Mr. Schaefer noted that in the Agricultural-Rural Residential zone for a detached accessory structure, there is a minimum 25 ft. rear yard setback if the proposed structure is greater than 200 sq. ft. and 5 ft. if the proposed structure is under 200 sq. ft. Mr. Schaefer added that this may be where the confusion originated.

Mr. Geyer submitted a note from the building inspector which shows the allotted area requirements, with the corrections made as well. This was marked Exhibit B.

Chairman Mills asked Mr. Geyer if it is his testimony that his original conversation with the building inspector, he informed Mr. Geyer that the setback was 5 ft. off of the property line.

Mr. Geyer responded yes.

Chairman Mills asked Mr. Geyer if he had advised the building inspector of the size of the proposed structure.

Mr. Geyer responded yes; it was on the building permit application.

Mr. Bengart asked Mr. Geyer if he had a building permit at the time the work was done.

Mr. Geyer responded that he had applied for the building permit, with another couple of things to do. This was after he had applied for the permit, but before it was issued. The permit being granted was being based on the additional testing that Mr. Geyer needed to have completed.

Mr. Bengart asked for clarification regarding the chain of events with the work being done and the permit.

Mr. Geyer responded that he is currently waiting for the permit to be issued, as the soil tests have been completed.

Mr. Geyer confirmed that he was informed he was able to put the stone down before the permit was issued. That is when the building inspector was at his home, they measured the area for the proposed structure, and the building inspector gave the okay for Mr. Geyer to continue.

Chairman Mills asked Mr. Geyer if he would prefer to have this request tabled so that he can have the building inspector provide his testimony, it may help.

Mr. Bengart advised that the building inspector should attend the meeting in order to give his testimony before the board to get his side of what occurred for the record.

Mr. Geyer responded that he prefers getting it over with tonight, but if it is better for it to be tabled, he will agree to that.

Chairman Mills noted that they cannot assure that the building inspector will provide the testimony, but it will give them time to gather more information to base their decision on.

Mr. Krey asked Mr. Geyer to get a written quote from the contractor for the cost to relocate the pad, which would negate the need for a variance.

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine to **table** Appeal No. 4 with the following requests:

- provide a written quote regarding the cost to move the pad
- Town of Clarence Building Inspector to attend and / or give written testimony.

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

MOTION CARRIED

OLD BUSINESS

Appeal No. 8 (from the 10-11-2022 meeting)

Marisa Samson
Residential Single-Family

Applicant requests a variance to allow chickens on a property less than 5 acres in size located at 4600 Shisler Road.

Town Code Reference;
§229-47 (B)

DISCUSSION:

Marisa Samson was present to represent and further explain her request.

Ms. Samson explained that she would like to obtain a variance so that she is able to have 7 chickens on her property.

Mr. Bengart stated that upon request of this board, the applicant has provided him with information in regards to the medical concerns that were raised. As attorney for the Town of Clarence and this Board, he is comfortable with the letter that has been provided.

Mr. Bengart added that there had also been a question about the estate, and the ability to have the estate consent to this application. Mr. Bengart noted that we did receive proof as to who the Executor is, as well as a letter indicating that the Executor has agreed to the application.

Mr. Krey stated that if he was to vote for this appeal, he would like to impose the following conditions to the approval:

- all hens, no roosters
- all hens are to have their wings clipped
- chicken coop must be on the furthest point away from the property line
- at least 20 ft. away from any window or door other than the owner's dwelling
- coop and runway in an enclosed area so that the chickens cannot escape
- coop is reasonably screened from sight by neighbors
- no more than 7 chickens can be kept, and only for the duration of the life of the chicken
- coop and runway must be kept clean and sanitary at all times
- no dirt or feces may be kept on the runway or ground or allow obnoxious odors to emanate from the property
- feed is to be stored in a metal container or any type of container that is rodent proof
- Town of Clarence has the ability to inspect the chicken coop as needed, with 24-hour notice, unless deemed an emergency.

Ms. Samson agreed to the conditions if they were imposed, but has concerns about clipping their wings.

Mr. Krey stated that is due to concerns of the chickens escaping, but Ms. Samson explained that they are fully enclosed so there is no possibility for them to escape.

Ms. Samson stated that they will always be in the enclosed run, at all times.

Discussion continued regarding the clipping of the chicken's wings. The point is to have assurance that they will not escape.

Mr. Krey stated that with imposing a condition that the coop and runway are to be enclosed to assure they cannot escape, he is comfortable with removing the condition that the chicken's wings are to be clipped.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

Mr. Drinkard asked about the 7 chickens and if one dies she can get a new one.

Mr. Bengart stated no, as they die, they die off.

Chairman Mills stated that there may be another point in time that she may need to return to the board, but for now this is how it stands.

ACTION:

Motion by Patrick Krey, seconded by Patricia Burkard to **approve** Old Business Appeal No. 8 with the following conditions:

- only hens allowed, no rooster
- chicken coop must be on the furthest point away from the property line
- at least 20 ft. away from any window or door other than the owner’s dwelling
- coop and runway in an enclosed area so that the chickens cannot escape
- coop is reasonably screened from sight by neighbors
- no more than 7 chickens can be kept, and only for the duration of the life of the chicken
- coop and runway must be kept clean and sanitary at all times
- no dirt or feces may be kept on the runway or ground or allow obnoxious odors to emanate from the property
- feed is to be stored in a metal container or any type of container that is rodent proof
- Town of Clarence has the ability to inspect the chicken coop as needed, with 24-hour notice, unless deemed an emergency.

ON THE QUESTION:

Ms. Samson stated that she has heard, understands, and agrees to the conditions.

Chairman Mills stated to distinguish this appeal from other similar type applications, they have received what the Zoning Board of Appeals has determined sufficient medical documentation from a licensed physician supporting the claim.

Additionally, the nature of the property as well as the aesthetics of the coop and the character of the neighborhood all support this variance request being distinguishable from other variance requests of this nature.

Gerald Drinkard	Aye	Patrick Krey	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Patricia Burkard	Aye		

MOTION CARRIED

Meeting adjourned at 8:00 p.m. with a motion by Patrick Krey.

Amy Major
Senior Clerk Typist