

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday February 14, 2017  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	David D'Amato
Patricia Burkard	Richard McNamara
Jonathan Hickey	

Zoning Board of Appeals members absent: Vice-Chairman Ryan Mills

Town Officials present:

Director of Community Development James Callahan  
Deputy Town Attorney Steven Bengart  
Councilman Robert Geiger

Motion by David D'Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on January 10, 2017, as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Rev. Ronald P. Sajdak	Otto Misso Jr.	R. Teso	Pat Darrow
Susan & Ted Hallac	Rafiqa Fazili	Abdul Fazili	James E. Joyce
Paul Donnelly	Rick Meka	Liz Walczak	Amy Hangen
Linda Jenkin			

### New Business

#### Appeal No. 1

Nativity of Mary School/Misso, Otto  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow an LED sign within the Traditional Neighborhood District located at 8550 Main Street.

Appeal No. 1 is in variance to §181-3(D)(5).

**DISCUSSION:**

Otto Misso is present, he is the facility manager at Nativity School and Church. Pastor Reverend Ronald P. Sajdak is also present.

There is one neighbor notification form on file.

Mr. Misso said the existing sign is in need of drastic repairs. They would like to change out the center part of the sign to have an LED for notices for the church and school with information/announcements such as upcoming events. There will be no videos or streaming lines on the sign. The proposed sign will not be larger than the current sign. Mr. Misso noted that the Harris Hill Fire Company down the road has a similar sign. They have invested a lot of money in the landscaping around the church and school and they do not want to put a sign in that is going to be a big distraction.

Chairman Michnik said the idea of the Traditional Neighborhood District (TND) zoning is to keep the hamlet-type appearance. It is noted that there was a proposal for another sign variance about 5 years ago, it was not an LED request. At that time the sign was just repaired instead of replaced, but now the sign is beyond repairing.

Chairman Michnik said the applicant was also in front of the Board in 2007 to extend the parking lot in front of the school. Mr. Misso was not involved in that request but he believes they followed what the Town asked them to do, they installed a \$50,000 stone wall around the property. Chairman Michnik read from the previous minutes with regards to the parking issue in which the church was asked to advise their patrons to use the parking lot. Chairman Michnik said he has attended services at the church and the parking is a mess. He knows this has nothing to do with the sign but it is his chance to let the church know that he has a concern about the parking. The church needs to continue to make a consistent effort to resolve the parking issue.

Mr. Misso said there is another LED sign in front of the plaza where Louie's Deli is. Mr. Hickey asked what caused the corrosive damage to the existing sign. Mr. Misso said weather, the sign is approximately 50 years old. The whole bottom of the sign is deteriorated. Mr. Hickey asked if there are any financial impacts with respect to the deterioration of the present sign. Mr. Misso said it is difficult to get messages up there, they are limited on how many letters they can use and those letters constantly fall off. Electrical tape is holding the ends of the sign together. Mr. Hickey asked if the applicant has considered a smaller sign than what is being proposed. Mr. Misso said they figured they would use the existing posts. They could lower the height of the sign.

Mrs. Burkard asked about using brick materials for the columns, Mr. Misso said he could probably do that, but to do the entire sign in brick would be too costly. Mr. McNamara asked if there is a foundation around the posts that will be big enough to hold the brick. Mr. Misso said the posts are in foundation.

Mr. D'Amato asked for the reasoning behind the size of the proposed sign. Pastor Sajdak said because that is the size of the current sign. The LED sign would make switching the message much more efficient. The sign will reflect school messages during the week and church messages on the weekend. Mr. D'Amato asked what colors will be used in the LED sign. Mr. Misso is not sure. Mr. D'Amato asked if the applicant can live with a smaller sign. Mr. Misso said he wants to make sure people can see it. The sign at Harris Hill Fire Department is hard to read. It is clarified that the LED sign at Harris Hill Fire Department was put in before the law changed to restrict LED signs in the TND.

Mr. Misso noted that there are no residents around the schools property on Main Street, it is all businesses. Some of the signage around the church and school is bad.

Mr. McNamara suggested the width of the LED sign be reduced to 4', with a 6" plaque area (border) that can be part of the aluminum frame. Some brick can be brought up around the sides of the sign. The applicant said they can explore this.

Chairman Michnik referred to the minutes of November 2010 variance request for a sign. In those minutes it was suggested that some type of brick columns be installed around the signage. A new sign was not put up at that time. Chairman Michnik said if the applicant dressed up the sign with stone and/or brick he would not have a problem with them going from end to end on the sign. Mr. Misso said he can get prices on these suggestions. In response to Chairman Michnik's question regarding how many lines the LED sign would have, Mr. Misso said three (3) lines would be enough. With regards to color, Mr. Callahan explained that one color will be cheaper. The law says there must be a 30 second hold on the sign message, no flashing or popping. Mr. Misso clarified that the message would be constant and may change weekly.

Mr. McNamara suggested the applicant come back with a drawing of the revised sign and bring a representative of the sign company to the next meeting. The applicant is hoping to construct the sign in the Spring 2017. The LED sign will be 5' by 2'.

The applicant asked the Board to table the proposal to provide time for a new rendering of the sign to be submitted. A new rendering will be submitted to the Planning Office.

**ACTION:**

Motion by Dave D'Amato, seconded by Patricia Burkard, to **table** Appeal No. 1.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 2**

Richard Teso  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow a detached accessory structure located within the front yard setback.
- 2.) A 568 square foot variance to allow for a 768 square foot detached accessory structure

Both requests relate to 9871 Greiner Road.

Appeal No. 2 is in variance to §229-55(D) and §229-55(H).

**DISCUSSION:**

Richard Teso is present. There are three (3) neighbor notification forms on file. Mr. Teso explained he has always wanted an additional structure on his property to store personal items. He also needs to store

property maintenance equipment such as the snow plow and the trailer that he uses to maintain property that he owns. Mr. Teso has lived at this location for 35 years.

Mr. D'Amato asked if the applicant has explored other options such as removing the existing shed and putting the proposed structure there. Mr. Teso said he will leave the shed as is, it is a tight space there which is up against the escarpment. The proposed location is the vacant portion of the property, the driveway comes in there and the drainage is good there, this is the most feasible location. Mr. D'Amato reference the requested size. Mr. Teso said with all his equipment and a pick-up truck that he needs to store, it would not be worth his investment if he built a smaller structure. The doors on the structure are only one panel bigger than the standard door. He stores his car and truck in his current garage. There is some small lawn equipment in the existing shed. Mr. Teso said within 500'-2500' of his property there are similar situations where there is an attached garage and a similar sized structure on the property. Mr. D'Amato said he suggested removing the shed and putting the proposed structure there because what the applicant is proposing is miss-matched to the surrounding properties. Mr. Teso said he would have to dig into the side of the escarpment if he were to put the structure there. There is also a drainage factor, he has excellent drainage in the proposed location. He would not jeopardize the resale or the aesthetics of his home or the homes in the neighborhood. The peak of the proposed garage is below the fascia boards of his house so it fits aesthetically, otherwise he wouldn't do it. The structure will be all wood construction with asphalt shingles and siding to match his house.

Mrs. Burkard voiced her concern with three (3) buildings on the property. She asked if there will be windows on the structure. Mr. Teso said there will be windows on the side and the back of the structure. So going down Greiner Road you will see the windows. Mrs. Burkard asked about shutters and landscaping. Mr. Teso said he will do both. He said his neighbors have no concerns.

Mr. Hickey noted that the piece of property is unique. He asked who will do the work on the proposed structure. Mr. Teso is not sure yet, he will be very particular. Mr. Hickey asked if the applicant has proposed the smallest feasible size to do what he wants to do. Mr. Teso said if the size is reduced it will look like a cubicle because of the height he needs. This will not create any drainage issues. The equipment that he wants to store in the proposed structure is now in the driveway. If this request is granted there will be nothing in the yard. The siding will be stained to match the shed.

Chairman Michnik asked if the applicant is willing to landscape the north side of the structure. Mr. Teso said yes he is looking forward to that. He would plant boxwood's and pines. He has no intention of selling the property.

Mrs. Burkard asked if Mr. Teso really needs the shed. He said he could haul the shed away but he does not want to do that, it adds a nice balance to the property.

Mr. Hickey asked if the proposed structure is lower than street level. Mr. Teso said it is on the same level as the house, so it is lower than street level. Mr. Hickey asked how far back the proposed structure is from the road. Mr. Teso paced off 28' to the culvert and then another 28'.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Richard McNamara, to **approve** Appeal No. 2, as written.

**ON THE QUESTION:**

Mr. Hickey said he shares the concern about this being a second accessory structure however he does not think it is an undesirable change. There has been a lot of evidence presented that there is no feasible alternate method to achieve the desired outcome. The topography is such that this will not be an “in your face” type of structure. It will draw the scattered items on the property into a secluded organized structure.

Jonathan Hickey amended the motion to include the condition that there are two (2) windows, shutters and landscaping to be installed on the Greiner Road side of the structure. Richard McNamara agreed to the amendment.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	David D’Amato	Nay
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 3**

Judith Sadkin  
Agricultural Floodzone

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow a 471.5’ setback for the construction of a single family home.
- 2.) A variance to allow for the construction of a detached accessory structure located within the front yard setback.

Both requests relate to 8100 Lapp Road.

Appeal No. 3 is in variance to §229-31(A)(1) and §229-34(E).

**DISCUSSION:**

Pat Darrow is present and representing Judith Sadkin, who is in Florida. Ms. Darrow submitted five (5) certified US mail receipts for the neighbor notification forms that were mailed to the surrounding neighbors. She explained that Ms. Sadkin would like some privacy from all the congestion of the street. She wants to set the house as far back as she can and build a barn in the future.

Mr. D’Amato voiced his concern with the absence of the property owner at this meeting, he would rather discuss the request with the property owner. He asked how long the owners have owned the property. Ms. Darrow said the owner is selling the property to an individual who will be building the residence, that individual is in Ohio. Mr. D’Amato remarked that neither party is present and they are asking for a huge variance. Ms. Darrow noted that she submitted a signed document indicating she is the representative of the client, however there is no document giving Ms. Darrow the authority to represent Ms. Sadkin on file. Nor is there any document advising she can represent the purchaser. The property is under contract, pending the approval of this request. Deputy Town Attorney Steve Bengart said without documentation from the property owner or the potential purchaser allowing Ms. Darrow to represent them he does not know how the Board can connect and act.

Mr. Callahan asked for confirmation that the property is not going to be split. Ms. Darrow said that is correct, the property will not be split. The house and the barn will be built on this one large piece of property.

Ms. Darrow said the property is in a floodplain and they are going to grade the surface and put a retaining wall in. They will use original cedar, clapboard and other original materials on the house, the barn will be attractive but look like an old pole barn. The proposed house is 111' setback from the north property line, and a 112' setback from the east property line. GPI did the survey, the regrading and the topography of the property. If the request is approved she will go to the Town Engineer for approval on the regrading plan.

The property is 29 acres in size. Ms. Burkard asked if the property can eventually be further developed. She voiced her concern with the placement of the house being in the corner of the property and asked what they intend to do with the rest of the property. Ms. Darrow said the purchaser has two (2) children. Ms. Darrow said he might break a parcel off and build a house for one of his children. She said it is not going to be a subdivision.

Mr. McNamara asked if the applicant will have to go through the Army Corp of Engineers and do a LOMAR. Ms. Darrow said they are not going below the floodplain. Mr. McNamara suggested turning the garage 45 degrees so that both building fronts are equal, eliminating one variance request. Ms. Darrow said the potential buyer wanted to have a circular aspect so it kind of closes in. Mr. McNamara asked what the topography is like for the location of the proposed buildings, is the topography better there than the rest of the property? Ms. Darrow said no, it is just where the potential buyer wanted the buildings. They walked the grounds and she said it seemed like a natural setting which was secluded enough to be away from the road. There are a lot of trees in that area, Ms. Darrow does not think he is going to take all the trees down.

Chairman Michnik asked if the applicant looked at moving the house closer to the road, the range is 45' to 200'. Ms. Darrow said that is not where the woods starts. She talked to the potential buyer and he wanted it setback for seclusion and privacy. Chairman Michnik noted that he would still have privacy with a 200' setback. This is a huge variance. The other houses are in line. Ms. Darrow said the houses to the east are not in line. Chairman Michnik said the major part of the road has houses that are all in line. The Board looks at consistency with a pattern that has already started in a neighborhood. Ms. Darrow said if he was closer to the road he would still have to grade the property and it would be an eyesore.

Chairman Michnik noted the criteria that the Board looks at when reviewing a request. This includes whether the benefit can be achieved by other means feasible to the applicant, will it result in an undesirable change in the neighborhood character or to nearby properties, whether the request is substantial, whether the request will have adverse physical or environmental effects, and whether the alleged difficulty is self-created. Chairman Michnik said any of these five items would fall into this category.

Ms. Darrow asked the Board to think of a house on top of a mountain or a hill, she doesn't think other houses in the neighborhood are on a hill. Mr. D'Amato said there are several all over town. Ms. Darrow said the Board would allow a 200' setback. Mr. D'Amato said not necessarily, the setback starts at 45' and goes up to 200'. Ms. Darrow thinks it is 100' on this parcel. She does not know if her client will purchase the property if he cannot set the house back as requested.

Mr. Fazili, owns 7237 Transit Road, which consists of 49 acres adjacent to the applicant's property. He is concerned with water/drainage issues and how this proposal could affect neighboring properties such as his. He would like to see a map that shows the surrounding properties in relation to the applicant's property.

Ted Hallac, of 7171 Transit Road, said he has gone back and forth about buying this place for over 35 years. He is curious to see what the problems were, why it's been bought, fell through, bought and fell through.

He wondered if the wetlands or sewers are the issue. He has no objections to the proposal he is just curious as to what will be in the neighborhood.

**ACTION:**

Motion by David D'Amato, seconded by Jonathan Hickey, to **table** Appeal No. 3. The applicant must be present at the next meeting this request is heard or a letter indicating that the applicant/present owner of the property gives the representative permission to represent said applicant. The letter is to be notarized. The Board would like the person who is under potential contract to purchase the property be present at the meeting as well.

**ON THE QUESTION:**

Ms. Darrow said she understands the motion. She asked if the Board would entertain a setback of 200'. Mr. Callahan clarified that if the applicant wanted a 200' setback they probably wouldn't need a variance because it would be within code. Over 200' is when a variance needs to be requested. Ms. Darrow asked if the barn can go in the back, Deputy Town Attorney Steve Bengart said that question is premature and can be discussed in the future. Mr. Callahan explained that if the accessory structure is behind the face of the principle structure a variance would not be required.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 4**

James Joyce  
Residential Single Family

Requests the Board of Appeals approve and grant a variance of .12 acres to allow for the creation of a .88 acre unsewered lot, split from 5175 Brookfield Lane.

Appeal No. 4 is in variance to §229-49(A).

**DISCUSSION:**

James Joyce is present and submitted two (2) neighbor notifications. Mr. Callahan noted that the neighbors who were present at the last meeting were notified by the Town. Mr. Joyce explained he would like to split the lot into two (2). The split lot has 135' frontage, it is 284.62' deep and .88 acres. At previous meetings it has been confirmed that the septic on that lot will be moved to the existing home lot, there is a permit on file. The movement of the septic system has been approved by the County. Additionally, the County requires 33,000 square feet on a new lot according to Jennifer the Engineer, Mr. Joyce has over 38,000 square feet on the proposed new lot.

Chairman Michnik noted there is an Onsite Wastewater Treatment System Existing Residential Construction Permit for 5175 Brookfield Lane dated 12-6-16 on file.

Ms. Burkard asked for clarification on the frontage of the lots. Mr. Joyce said the frontages will be 135' and 165'. She also asked if the driveway will remain as is, Mr. Joyce said yes. He went on to explain the reason for the 135' frontage is in order to avoid compromising the existing structure.

Mr. Hickey asked what is different from the December 2016 requested variance to now. Mr. Joyce said he went from 125' of frontage and .80 acres to 135' and .88 acres. Mr. Hickey said an acre is 43,560 square feet, .88 acres equates to 38,332.8 square feet. Mr. Joyce said also since the December meeting the septic system has been approved to be moved.

Mr. McNamara asked why the lot isn't being split 150' and 150'. Mr. Joyce explained that the existing driveway would have to be tore up and removed if the property was split down the middle. It is clarified that a driveway has to be off the property line, for drainage, a minimum of 3', if it was brand new the minimum setback would be more. Mr. McNamara calculated about 15' of the existing driveway/turnaround would have to be removed. Mr. Joyce concurred. Mr. McNamara said this would make it consistent with what is in the neighborhood. Mr. Joyce does not believe that is the case, in terms of total acreage and lot area, his proposal conforms with the neighborhood. He went on to say that there are lots on Brookfield Lane that go to Greiner Road that are actually smaller than the lot that he is proposing. Mr. McNamara referred to Exhibit B from the December meeting and said the lots immediately adjacent to the applicant's lot and across the street are all 150' or more. Mr. Joyce said the lot compared to the acreage of the pieces of property on Brookfield Lane is within the circumference of the neighborhood. Mr. McNamara said within that block there are only three (3) lots less than 150'.

Chairman Michnik voiced his concern with the size of the lot and the split. He noted that the Board suggested an equal split or a little less than equal at the December meeting. He feels the applicant understood what the Board was asking for. The Board's job is consistency. Mr. Joyce said the frontage requirement is 125', his request is for 135'. His variance is .12 of an acre, that's all he is asking for. He said there are a number of lots that are far smaller than this lot in the neighborhood. Chairman Michnik agreed but noted those lots are not next to or across from the applicant's lot.

Mr. D'Amato asked what the logic is behind the split. Mr. Joyce said the house is 65 years old, no one is going to buy this as one piece of property for what it is worth. It has been on the market for \$240,000, they've had offers for \$200,000. If the lot is split and the option is given to the buyer to do what they want, the value is there. His dad built the house and his parents lived there for 65 years. Mr. Joyce grew up in this Town but does not currently live in the Town. He has had people that are interested in the property. Mr. D'Amato asked if 150' split is negotiable. Mr. Joyce said he tried to fulfill the Town's requirement of 125', that's not going to work. He moved it to 135' and moved the septic system to the existing house to be in compliance with the Town. It is almost a 1 acre lot, how can that not be in compliance with the neighborhood? Mr. D'Amato said he thinks the neighbors are concerned about keeping the property values equal in the neighborhood. Mr. Joyce said if someone buys the property and builds on it, it will be a \$400,000 home and will enhance the neighborhood. Mr. D'Amato said there is a development going up across the street. Mr. Joyce said any new construction is going to enhance the value of the neighborhood. The pad was needed to come in and out of the three car garage, it was added to the house 25 years ago. A split was not considered before because his father passed away and his mother lived in the house and she did not want to split it. Mr. D'Amato noted that the Wastewater Treatment System Permit expires in two (2) weeks. Mr. Joyce said it doesn't, it can be extended.



Ms. Burkard asked if the property was at 150' is it possible to put a new driveway in that goes to that garage. Mr. Joyce said you'd have to rearrange the whole area, he doesn't know if it is possible. Ms. Burkard asked if the new lot is 150' wouldn't it bring in more money? Mr. Joyce said he doubts it.

Linda Jenkin Costanza lives across the street from the property in question. She submitted old pictures of the lot, she does not feel they are in perspective. She lives next to a 300' lot owned by an elderly man. When he passes away his children are going to do the same thing and ask for variances to sell off the lots, this concerns her. She noted that there is 45' of unused property to the south of the house. She believes that if Marge and Al Joyce really wanted to break this property up they would have moved the house. The number of houses on the west side of the street there are ten (10) houses that are 150', on the east side there are eight (8) houses at 150'. She does not believe the proposed split is the best idea because the houses are on septic and the proposed development across Greiner Road has sewers.

Rick Meka, of 5125 Brookfield Lane, has lived there 29 years. When he bought his property the original lot was 300' wide. He could not afford the entire lot so the property owner split the lot. Mr. Meka has 188' and his neighbor has 112'. Going down that direction there is only one other lot that is 300' wide on his side of the street, all the rest are smaller than that, they have all been split up. Putting another house between Marge's property and the next one is not going to detract from the neighborhood whatsoever. 135' of frontage and almost an acre fits in with the rest of the houses on his side of the street. It will improve the values of the other homes on the street. He is not objecting to the proposal at all. He took care of Marge's property for 20 plus years, she had offers to buy the lot and she told Mr. Meka the only reason she didn't was because of where the septic is located. Jim is addressing that issue.

Liz Walczak, of 5205 Brookfield Lane, said she wanted to buy a portion of the property so that no one would build a house next to her. She had her daughter call when the house went on the market and she was told by Marge's daughter Kathy that they were absolutely not going to split the property. Ms. Walczak heard that the property was going to be split so she called Kathy who said her brother was adamant about not splitting the property and would be sold as is. When the property was being surveyed Ms. Walczak called a third time and was told again that the property would not be split, Kathy wanted nothing more to do with it. Ms. Walczak is not interested in buying 135' of property next to her.

Amy Hangen lives at 5085 Brookfield Lane and is concerned about the lot being 135', she asked if that would put the driveway 3' off the neighbor's property. She feels it would not be in keeping with the integrity of the neighborhood.

Paul Donnelly of 5220 Brookfield Lane has lived there most his life. He and his wife signed the petition that Linda submitted because they didn't have enough of an understanding of what was going on. Since that time Mr. Donnelly has obtained enough information to understand the situation. The character of Brookfield Lane is very important to him and he does not see this proposal doing anything but adding to the values in the neighborhood. It will not have a negative impact on the neighborhood and he does not oppose the request.

#### **ACTION:**

Motion by Jonathan Hickey to **approve** Appeal No. 4 as written. There is no second.

MOTION FAILED.

**ACTION:**

Motion by Jonathan Hickey to **table** Appeal No. 4 to allow Mr. Joyce to re-consider what he has heard at this meeting and come back before the Board with additional/new information.

Mr. Joyce said he is not interested in coming back before the Board with additional/new information.

Mr. Hickey withdrew his motion.

Mr. D'Amato said for Mr. Joyce has options to come back to the Board. Those options include exploring a split of 150' and the cost incurred for changing the driveway. It is also suggested that he submit statistics and facts showing that he has explored every single option. He could speak with the neighbors on either side to see if they are interested in buying some property. Mr. Joyce does not want to sell portions of the property to the neighbors.

**ACTION:**

Motion by Jonathan Hickey, seconded by David D'Amato, to **table** Appeal No. 4 for all the reasons discussed for 30 days, until the March 2017 meeting.

**ON THE QUESTION:**

Mr. Joyce understands where the Board stands with his request. Mrs. Burkard asked for Mr. Joyce to submit figures on what it would cost to move the driveway. Mr. D'Amato asked for dimensions as well and suggested Mr. Joyce explore every option to get the project done on his (Mr. Joyce's) end. Mr. Joyce said it was never his intent to compromise the neighborhood.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting Adjourned at 9:08 p.m.

Carolyn Delgato  
Senior Clerk Typist