

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday March 13, 2012  
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning	Vice-Chairman Daniel Michnik
Ryan Mills	David D'Amato
Jonathan Hickey	

Zoning Board of Appeals member(s) absent: Patricia Burkard

Town Officials present:

Director of Community Development James Callahan  
Deputy Town Attorney Steven Bengart  
Councilman Peter DiCostanzo

Other interested parties present:

Ken Ulrich	Lenny Ballaro
Todd O'Geen	David Sutton
Joe Zampogna	Yang Xiao
Jim Pauly	

**Appeal No. 1**

Kenneth A. Ulrich  
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow for both an attached and detached garage.
- 2.) A 384 square foot variance to allow for a detached garage 1,104 square feet in size.
- 3.) A 60 foot variance to allow for a front yard setback to a primary residence at 235 feet.

All requests apply to 5865 Shimerville Road to allow for the construction of a new primary residence and detached accessory structure (garage).

Appeal No. 1 is in variance to § 229-55 (H), 229-55 (D), 229-52 (A)(3) respectively.

**DISCUSSION:**

Ken Ulrich is present and explained that his family owns five (5) cars, soon to be six (6), and he would like the garages, attached and detached, for the storage of the vehicles. He also has a jetski trailer that he would like to store in a garage. The setback request is to conform with 5845 Shimerville Road, which is

the house that adjoins his property to the south. The neighbor is aware of the request and is in favor of it. There are five (5) neighbor notification forms on file.

Mr. Michnik asked for details on what the house will look like. Mr. Ulrich said the square footage would be about 4800; he distributed three (3) 8 ½" x 11" illustrations of the plans for the house. The illustrations show the front elevation, the side elevation with a side load garage and a side elevation that will face the neighbor's house. There will be a first and second floor. The property is currently under contract contingent upon the variances before the sale is finalized.

Chairman Henning noted that there is a letter on file from the current owner of the property stating that he is aware of the sale and has no problems.

Mr. Michnik said the property stakes are about six feet (6') past the neighbor's front set-up, it is not even. Mr. Ulrich said he spoke with the neighbor about this and the reason it is uneven is so when he or his neighbor walk out their back door their porches would not align with each other; this will offer some privacy.

Mr. Mills asked the applicant if he would be flexible in moving the house up any distance at all. Mr. Ulrich said if he can't set the house back at least as far as the adjoining property, he would not consider purchasing the property. He would consider the 220' setback but he would rather the 235'.

Mr. D'Amato asked if the applicant explored the option of putting the detached garage with the house. Mr. Ulrich said he discussed that option with the builder but he will have the four car garage attached. The detached garage will architecturally match the house.

Mr. Hickey asked if the items stored in the garage will be personal items. Mr. Ulrich said yes, his family consists of four (4) teenagers and two (2) adults who will be driving vehicles in and out of the garages. There will be no repair and sales of vehicles from the garages.

Mr. Michnik asked why the applicant needs a 24' x 46' garage. Mr. Ulrich said it is a four (4) bay garage with two (2) double doors. The developer suggested a few extra feet in order to separate the two (2) doors; otherwise they would be too close together. Mr. Michnik is concerned with the size of the garage and asked if the neighbors realize how big the detached garage will be. Mr. Ulrich did not talk to the neighbors about the specific size. Mr. Ulrich said the neighbors are relieved with his proposal because a group home was previously proposed for that property and the neighbors were nervous about that. Everyone in the neighborhood is pleased that there will be a high quality single family home on the lot.

In response to Chairman Henning's question about planting trees or shrubs, Mr. Ulrich said the lot will be fully landscaped. He is hoping construction will be complete in six (6) or seven (7) months.

Mr. Mills is also concerned with the size of the detached garage and suggested a landscape plan be reviewed and approved for the northern side of the garage by the Landscape Committee in an effort to mitigate the issue. Mr. Callahan said the applicant would need to submit a plan from a landscape architect based on what conditions the Board places on the approval, the Landscape Committee will review and approve it. The Landscape Committee does not design the plan. Mr. Ulrich said he could do that.

Lenny Ballaro, of 8897 Connemara Lane, said he has no issue with the home being built. He asked what the height is for the proposed detached garage. Mr. Ulrich said it is a single story with windows. Mr. Ballaro said if the garage could be softened with some landscaping that would be great.

Todd O’Geen, of 8873 Connemara Lane, asked where the driveway will be located for the proposed new house. Mr. Ulrich said it is planned to be at the center of the lot. The back of the garage will have no windows. Mr. O’Geen said landscaping would be nice on the back side of the garage.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1 as written with the following condition:

-Subject to review and approval of a Landscape Plan by the Landscape Committee. The Landscape Plan must be submitted by the applicant and show sufficient buffering of the detached garage to adjoining residents on the north side, parallel to Connemara Lane.

-Approval of the variance is conditioned on the applicant purchasing the property. If the applicant does not purchase the property, the approval of the variance is null and void.

-The Landscape submission(s) and construction work must be done within 16 months of this meeting.

Jonathan Hickey	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 2**

Switala’s Construction  
Residential Single-Family

Requests the Board of Appeals approve and grant a use variance to allow for the construction of a two-family residence at 6132 Railroad Street.

Appeal No. 2 is in variance to § 229-47(A).

**DISCUSSION:**

Rick Switala, owner of the property, is present. Dave Sutton, architect, is representing his client this evening. Mr. Sutton distributes a letter he drafted with an outline of the proposal; a copy of the letter is on file. He explained that there used to be a two-family home on this property that was built in 1940, this structure was demoed last year for obvious reasons. Photos are on file. The lot was cleared and classified as a vacant lot. Mr. Switala purchased the property last year with the understanding that he could build a duplex on it, he gained this understanding from the information he obtained in the Assessor’s office.

Mr. Sutton said the property was cleared and that was an improvement; this proposal will be the next step in improving the lot and will not create an undesirable change to the character of the neighborhood, nor will it be a detriment to nearby properties. The architectural design of the structure is such that it looks

like a single family home from either street. The proposed townhouse apartments are approximately 1400 square feet in size. They have three bedrooms each and the apartments will be side by side.

Mr. Sutton said the benefit sought by the applicant could not be achieved by some other method. It would be difficult to achieve the requirements for a single-family residence because of the nature of the lot. They feel they can obtain a reasonable return on the investment of the property if a two-family residence is allowed.

Mr. Sutton does not feel the variance is substantial; they are going from a single-family to a two-family. He does not feel the request is out of character to the zoning regulations that regulate this property; it complies with all other zoning regulations. All utilities can easily support a two family residence on this property.

Mr. Sutton feels that they are creating a very compatible structure as there are several two-family homes in the area. It will not create a negative impact; it will put the property back on the tax roll as an occupied structure. It will bring a positive aspect to that corner. The alleged difficulty was not self-created. The current owner of the property purchased the property with full intent of building a duplex on it. Due diligence was done by checking with the Assessor's office and finding out that it was a 2 family residence since approximately 1940.

Mr. Hickey noted that Mr. Sutton used the criteria for an area variance; this request is for a use variance. Mr. Sutton said of the criteria overlap between the two; he will be happy to reword his presentation if needed. Mr. Hickey referred to the first criteria under the Use Variance section which indicates the applicant must prove he cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. Mr. Hickey asked the applicant to provide information on the finances. Mr. Sutton said the construction cost of a single family house and a duplex with the same square footage is approximately the same. If the applicant built a 2800 square foot house the cost to sell that house would be far in excess of what they could receive to sell at a profit, namely because of the property to the north and some of the adjacent properties. There are very nice houses to the south and west. The applicant bought the property with the intention of building a two family home on it, so they may have over paid because they thought they would get a return on it as a rental. The applicant will not live there but will remain the owner and rent it out.

Mr. D'Amato asked what the rent would be. Mr. Sutton said a typical rent for this type of housing is \$1.00-\$1.20 per square foot. So each unit would be approximately \$1,400 a month. Mr. D'Amato said it would be the same if a single family home was built and then sold or rented out. Mr. Sutton disagreed and explained that to rent a single family house would not bring in \$1.00 per square foot; the house could not be rented for \$2,800 a month. The property was purchased for \$60,000, if this is added to the cost of a new home, the general formula would indicate the home would have to sell for \$300,000 to justify the investment based on standards of purchasing the lot and building a single-family home. He feels this corner lot would not support that level of a single-family home.

Mr. Mills is concerned with putting a multi-family residence in a single-family area. He feels the applicant could build a single-family residence with less square footage so the selling price would decrease from \$300,000.

Chairman Henning read a memo dated March 12, 2012 from the Town Engineering Department into the record: "The proposed project is located in Clarence Sanitary Sewer District No. 2. Please be advised, per the letter to the Planning Board from Timothy M. Lavocat, P.E. dated March 5, 2012, that because of

stormwater inflow and infiltration issues in this district, the New York State Department of Environmental Conservation has put a temporary hold on any new developments within the district. The Engineering and Building Departments are able to review plans for proposed projects in the district, however, no permits will be issued until this matter is addressed.” The letter is on file.

Mr. Sutton is aware of the memo; however, he has not seen it yet. He realizes the project would have to adhere to any concerns the Engineering Department has; the applicant will gladly comply with any requirements.

Mr. Michnik said he did not see any other doubles in the Railroad Street and Maple Road area. He is concerned that this project will change the character of the neighborhood. He is concerned with the placement of the driveway and the height of the structure.

The size of the lot is 138' x 135'. A survey from Camille & Camille is referred to and shows a house located on the lot September 26, 1957 and revised December 3, 1957. Mr. Sutton pointed out that the previous structure was located on the property line on the corner.

Neighbor notification forms are on file.

Joe Zampogna, of 9501 Village Mill Lane, is concerned with the property going from owner-occupied to a rental. His second concern is that the property is going from single family to a duplex.

Mr. Sutton asked if the Board would consider tabling the project so he can provide further financial background.

#### **ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **table** Appeal No. 2, to allow the applicant time to provide further financial information/analysis.

#### **ON THE QUESTION:**

Mr. Mills suggested an appraiser or realtor be present at the next meeting to answer further questions the Board may have.

Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

#### **Appeal No. 3**

Shuman Hua  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 15' variance to allow for a front yard setback of 25' to a primary residence for the construction of an addition to an existing garage on a corner lot at 8211 Fernleaf Court.

Appeal No. 3 is in variance to § 229-52(A)(1).

**DISCUSSION:**

Yang Xiao, Shuman Hua's husband, is present along with Jim Pauly of Pauly's Construction. Mr. Xiao explained that they currently have a two-car garage. They have two (2) children that are growing up; they need a garage for the third car. Mr. Pauly explained that there isn't another location to add the garage because of the odd layout of the house and its placement on the lot; there is no side lot.

Two neighbor notification forms are on file.

Mr. Michnik asked if the neighbor across Pine Loch Lane is aware of the applicant's request. Mr. Xiao said yes.

Mr. Mills asked if the construction will be Stucco or Dryvit. Mr. Pauly said it will be Dryvit and he will match it to the existing house. The roof shingles will also match. There will be no livable space inside the addition. There will be a new front sidewalk and new landscaping put in. The driveway will be widened to receive the door on the addition.

Mr. Xiao has lived at this address for nine (9) years.

**ACTION:**

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 3, as written.

Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Nay
Arthur Henning	Aye		

MOTION CARRIED.

Motion by David D'Amato, seconded by Arthur Henning, to **approve** the minutes of the meeting held on February 14, 2012, as written.

Jonathan Hickey	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 8:00 p.m.

Carolyn Delgato  
Senior Clerk Typist