

Town of Clarence
 One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
March 8, 2022

This meeting was not an in-person meeting, it was strictly virtual.
 The Zoom meeting link may always be found on the published agenda, which is accessible
 on the Town of Clarence’s website

Chairman Ryan Mills called the meeting to order at 5:30 p.m.

Zoning Board of Appeals members present:

Ryan Mills, Chairman	Patrick Krey, Vice-Chairman	Richard McNamara
Raymond Skaine	Patricia Burkard	

Town Officials present:

Director of Community Development Jonathan Bleuer
 Deputy Town Attorney Steven Bengart
 Councilman Paul Shear

Other interested parties present:

Nigel Bates	DJ	Andrew S	Jesse Gilbert	*Zoom User*
Thomas’s iPhone	*Owner*	Jeremy Bates	Joe Davis	

Motion by Richard McNamara, seconded by Raymond Skaine to **approve** the minutes from the February 8, 2022 meeting.

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

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

John Rubino
 Agricultural Flood Zone

Applicant requests a variance to allow an 85’ front yard setback for the construction of a single family home located at 8340 Goodrich Road.

Town Code Reference;
 §229-31 *Average front yard setback of 51’

Chairman Mills informed the applicants that the Zoning Board of Appeals has the ability to approve, deny, or table any request.

DISCUSSION:

Mr. Rubino was present virtually, to explain his request, adding that he has a property which is located next to a single family house directly to the south. The house sits just over 50 ft. off of Goodrich Road, and his other neighbor to the north is a similar distance off of Goodrich Road. Mr. Rubino stated that he believes the town uses an average when establishing a setback for a new house being built.

Mr. Rubino explained that if he sets his house back 50 ft., he will not have space to install a septic system in front of the house, which Erie County prefers. It would be ideal for his property, to have a drainage system in close proximity. Because there is a ditch located at the road which is also preferable with septic systems.

Mr. Rubino stated that he estimated needing an additional 30' making it an 85' front yard setback.

Mr. Rubino added that he spoke with his neighbors located at 8330 and 8350 Goodrich Road, neither had any issues, and both signed the Neighbor Notification form that Mr. Rubino presented to them. Mrs. Cummings, located at 8330 Goodrich Road would benefit from the larger setback as well, as it would give her additional privacy.

Mr. Rubino stated that he is limited as to where he can locate this house on the property, due to wetlands on the rear of the property. He can't install a septic system in the backyard due to the wetland.

Mr. Krey stated that he went to Mr. Rubino's property today but was not able to find the stakes to indicate where the house would be located. Mr. Rubino responded that he placed two spray painted stakes in the ground showing where the front of the house will be located.

Mr. Krey asked how Mr. Rubino's neighbors were able to place their septic tanks and leech fields in their backyards, but Mr. Rubino is unable to. Mr. Rubino responded that the house located to the left was built close to 80 years ago, when septic systems were mainly placed in the rear yards. Now the Erie County Department of Health prefers the septic systems to be in the front in order to reduce the limitations that come with having it placed in the rear of a lot.

Mr. Krey noted that the septic tank itself won't be that large, but that the size of the leech field is why Mr. Rubino is requesting the additional space in the front of the house. Mr. Rubino responded that he spoke with a septic engineer who advised him of what he would need. Mr. Rubino added that even with this added space, it will be a tight fit.

Mr. Krey asked whether there were any other options that would reduce the size of the requested setback, Mr. Rubino responded that the septic engineer has given him the minimum frontage setback that he would need, and is going off of his engineer's expertise and guidance.

Mrs. Burkard asked Mr. Rubino when he purchased the property. Mr. Rubino responded that he purchased the property approximately 2.5 years ago, but then Covid happened and delayed all of his plans.

Mrs. Burkard asked if Mr. Rubino was aware of this issue when he purchased the property, Mr. Rubino responded no, he was not. He is located on a 9 acre lot, and did not know that a house could only go 50'

from the road. There is a house across the street which is setback close to 200', and in that area of Goodrich Road, houses are setback at an assortment of depths.

Mr. McNamara asked how far off of the road are the wetlands, Mr. Rubino responded that they are approximately 200' straight back from the front property line. Mr. McNamara noted that he needs to stay 100' away from the wetlands for the buffer with the septic.

Mr. McNamara stated that he understands the request of 85' in the front, and keeping away from the easement, the right-of-way, and the side lot lines. Mr. McNamara believes it is an acceptable request, and sees no issues with it.

Chairman Mills asked Mr. Rubino if the house he is building will be for his own personal use, or if he plans to sell the property. Mr. Rubino responded that he plans to sell the property. Mr. Rubino stated that he had contemplated selling the lot but decided it would be more affordable to build a two-story house. The variance is the first step to the process, and he can't get any building permits until the variance is in place.

Chairman Mills asked if there will be two building lots on the parcel, Mr. Rubino responded there will be only one. He is planning on building a 2,100 sq. ft. colonial house.

Chairman Mills asked if Mr. Rubino has received any documentation from the Erie County Health Department regarding their preference for front septic systems. Mr. Rubino responded that he spoke with a representative this afternoon who once again reiterated their preference for front yard septic systems. He will attempt to get an email with that information as well.

Chairman Mills stated that one of the documents that Mr. Rubino provided was a front elevation and floor plan for a home 1,995-2,500 sq. ft., which Mr. Rubino noted that it is similar to what he is planning. Chairman Mills noted that the document will be labeled Exhibit A.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Patricia Burkard to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Bengart asked if there was any concern with putting something on the record regarding planting any trees or other items, as well as there not being a second lot.

Mr. Skaine responded no, they are simply looking at a setback variance.

Chairman Mills stated that based on the layout of this parcel amongst the neighbors, the setback does not appear to have any impact on the adjacent neighbors. Additionally, based on the applicant's testimony relating to the Erie County Health Department's preference for the front location of a septic system preferred due to wetlands, that this variance request can be distinguished from other similar requests.

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

MOTION CARRIED

Appeal No. 2

Doug and Tina Engl
Residential Single-Family

Applicant requests a variance to allow a 92' front yard setback for the construction of a single family home located at 8800 Stahley Road.

Town Code Reference;
§229-51(A) *Established front yard setback of 114'

DISCUSSION:

Nigel Bates from Buffalo Modular Homes was present virtually, to represent the applicants. Mr. Engl was also present virtually and gave consent for Mr. Bates to represent him.

Mr. Bates stated that they are requesting a variance to change the front setback at 8800 Stahley Rd. from 114 ft. to 92 ft. in order to accommodate the front of the garage which sits in front of the house. The house and the garage structures have already been built.

Mr. Bates stated that when they approached the location and pinning of the house and garage with respect to the lot design, the proposed house box is located within a certain perimeter, which specifically is 114 ft. from the front.

Mr. Bates noted that the mistake they made as the builder was not clarifying with the surveyors the need to place both the garage and the house within the proposed house box. Therefore when the staking of the property took place the house was within the proposed house box, but the garage which sits in front of the house was located outside of the house box.

As it was surveyed on behalf of Buffalo Modular Homes, they proceeded based on the survey, the pinning, exterior markings of both the house and the garage. Both the garage and house foundations were placed as laid out by the surveyor.

Mr. Bates stressed that as the builder, Buffalo Modular homes takes complete responsibility for the build, and accepts full responsibility for the layout.

As it stands, the house itself sits within the 114' but the 21' garage sits in front of the house, therefore intruding in to the 114' setback by approximately 21 ft. Because it has already been built, they are requesting the Zoning Board grants a variance. Mr. Bates stated that if it had not already been built and it was only a matter of pinning, then they would be able to rearrange it all in order to move both the garage and house back so that they were both located within the house box.

Mr. Bates also stated that he is aware of this issue in regards to other code issues. The variance request does not mitigate or impinge on any of the other items that were raised as concerns from a code violation standpoint. Mr. Bates noted that to his understanding the other areas have been addressed satisfactorily, or are currently being addressed. Mr. Bates stated that the setback issue is the only remaining outstanding variance issue.

Therefore Buffalo Modular Homes is requesting the board grant a variance in recognition of where the current structure remains given how they approached the installation.

Mr. McNamara asked who owns the property, Mr. Bates responded that Mr. and Mrs. Engl are the property owners.

Mr. McNamara asked if there is a Building Permit for the job, Mr. Bates responded yes there is a Building Permit. Mr. McNamara asked if the foundation has been inspected, Mr. Bates responded that yes the foundation has been inspected, and there was a question regarding the tile and the stone, which they have addressed. Mr. Bates confirmed that they had satisfied all of the requests and requirements before the building permit was issued before any work began.

Mr. McNamara stated that he understands Buffalo Modular Homes is a builder, and mistakes do happen, but this is a big mistake.

Mr. Krey asked Mr. Bates whether they have determined what the cost would be if they need to move the garage. He understands the foundation has already been poured, but has Mr. Bates looked in to what it would cost to re-do what has been done incorrectly.

Mr. Bates responded that they have looked in to what it would involve to move the garage, but the design of the garage in terms of the entrance from the garage in to the house lines up with where the house is designed. Because they are a modular builder, the house already built. If it was a stick build house which is where they are able to re-design as they're building, there may have been an opportunity to play with the location of the garage so that the entrance from the house in to the garage could be moved.

Because they are a modular home builder, the exterior doors and windows have already been established, therefore they are somewhat limited in terms of relocating the garage. It would then entail moving both the garage and the house foundations, which would be a significant cost. Although the foundation is a Superior Wall foundation, they could lift those all out and try to move them, but it would also mean excavating, re-digging, and moving stone, then re-compacting stone and bringing a crane in. It could be done, but the cost would be substantial.

Mr. Bates stated that after reviewing their options, asking for a variance is the best approach.

Mr. Skaine asked what the total width of the garage is, and Mr. Bates responded that it is 22'x22', which is the cause for the intrusion into the setback.

Mr. Skaine asked what the length of the house is, and Mr. Bates responded that it is 69'.

Chairman Mills discussed the chronology of events involving the permits, and asked if there had been a Stop Work Order placed on the job. Mr. Bates responded yes, that part of the permit process was to provide a foundation survey which they did. Ultimately that is a portion of what triggered the stop work order along with a failure to have the necessary inspection done of the tile and stone.

Mr. Mills asked why the inspection was not done appropriately. Mr. Bates asked if Mr. Mills wanted to have a discussion regarding the code violations as opposed to or included with the variance. Mr. Mills stated that the foundation is at issue, and he is curious as to the chronology as it pertains to the foundation.

Mr. Bates explained that normally the process for the Superior Walls installation is the excavation, then the foundation is pinned by a surveyor. Both outside prior to the excavation, and then inside post excavation. This is done to confirm the Superior Walls are placed exactly according to the location identified in the drainage plan. Once it has been pinned, the excavated area is stoned and the sump pail and tile are placed with respect to the pins. This is partly done to assure that when the Superior Walls are placed, they are not placed on the tile or sump pail and that the tile is where it is supposed to be relative to the walls.

Mr. Bates explained that normally their contractor would have an inspection done of the tile, which doesn't need to be done prior to the walls being set because both the stone and the tile are visible once the walls are set. Whether the inspection was completed prior to the walls being installed or after, does not inhibit them from installing the walls because everything is still open for inspection. The house and garage walls are then placed by Superior Walls.

Chairman Mills noted that Superior Walls are the 3rd party hired to place the walls, who is the other 3rd party contractor that Buffalo Modular Homes uses. Mr. Bates responded that CMC Concrete are the contractors who handle the stone installation. Because they are in charge of the schedule and know when the work will be done, Buffalo Modular relies on them to call in for the inspection. At that point, an inspection of the floor, tiles, and walls would be conducted.

Chairman Mills asked why that was not done in this case, and Mr. Bates responded that unfortunately, that call was not made. As a result of that, Mr. Bates stated that they had a discussion with CMC Concrete, who then provided the necessary documentation assuring the Town of Clarence of the required stone depth, location of the tile, and they also have validation from Superior Walls affirming that the walls were not placed on the tile. Additionally, that the stone, tile, and the site fully met their requirements for the installation of their walls, which is according to code.

Mr. Bates stated that out of the five items, the three that related to the stone and the foundation have been satisfied from a code aspect. One of them relates to the framing and is not an issue because that can still be inspected, as it remains visible and open for inspection. The remaining issue is the setback issue, which came to their attention due to the foundation survey.

Chairman Mills asked Mr. Bleuer if he has the Stop Work Order that was issued available. Mr. Bleuer responded that Jesse Gilbert, a Code Enforcement Officer from the Town of Clarence was on the call, and has identified through a digital raised hand that he may have some comment to add to this matter.

Mr. Gilbert stated that this is a very unique situation, as it is both a designed foundation and is also engineered. Very few modifications can occasionally be made to them, as well as to the modular home which is pre-built off-site and transported to the site.

Mr. Gilbert stated that there is a valid permit, and that after being inspected by a 3rd party, the work appears to be sufficient in regards to everything but the location and elevation. Those two items were also being verified by a 3rd party, through the work of a surveyor. A surveyor is typically required for any new build home, even with additions that have a foundation.

Mr. Gilbert noted that the reason for the distinction of the 114' setback between what was submitted on the plans versus what was actually put in to place. They placed the house itself at the 114' setback, which put the garage past the required setback.

There was no setback excavation inspection, and this error was not caught because there was no inspection called in by the excavation company. Mr. Gilbert added that they did not get an inspection for the stone footing, typically they will receive a call for an inspection for the foundation or foundation water proofing. It was at this point that Mr. Gilbert saw where the house was on site.

Mr. Gilbert stated that because of the way the house needs to be built, you cannot back fill or pour the floor until you have the first floor decked. Mr. Gilbert added that he mistook it for the one located next door, as they are installing two at the same time. Mr. Gilbert thought it was the address on Conner Road, not the one located at 8800 Stahley Road.

Mr. Gilbert noted that he is aware Buffalo Modular Homes typically does things differently than how the Town of Clarence does, but ultimately their first communication was of Mr. Gilbert contacting them to ask why there was a hole, foundation, footing, and house up yet he had not received any calls at that point.

Mr. Gilbert stated that Buffalo Modular Homes has done everything that he has asked them to do, and it appears that everything is sufficient. The only thing that appears to be outstanding, is the homeowner's recognition that a 3rd party had inspected it rather than the Town of Clarence, because the town has not conducted those floor inspections. As long as Buffalo Modular Homes approves of them being done by a 3rd party, the Town of Clarence cannot be responsible for having any influence on inspections that Mr. Gilbert didn't perform.

Steven Bengart, Town Attorney, stated that the Town of Clarence will not take any responsibility for inspections that they had nothing to do with.

Mrs. Burkard stated that she understands the foundation is there, but can the garage be relocated to next to the house. Mr. Bates responded that it cannot, due to the side setback requirement, it would put them over the property line. Mr. Bates added that depending on what the owners would agree to, they may be able to resize the garage in order to make it possible to relocate it. The problem is that the house is already built, so they are unable to modify the framing. The entrance from the house to the garage is already in place, as well as the design of the inside of the house.

Mrs. Burkard asked if it is typical to lay the garage down separate from the house with modular homes. Mr. Bates responded that the house is modular, but the accessory structures are stick built on site.

Chairman Mills asked Mr. Bates whether placing the garage behind the house would be an option. Mr. Bates responded that he doesn't believe it is feasible, due to the layout of the house. The entrance from the house to the garage is through the utility room and downstairs bathroom.

Mr. Bates stated that they could turn everything 180° but that would place the back of the house facing the road.

Chairman Mills asked Mr. Bates what he estimates the cost to be to move the entire house back in order to meet the required setback. Mr. Bates responded that he believes it would be greater than \$50,000.

In regards to Public Participation, the following spoke:

- Mr. Joe Davis, located at 8907 Stonebriar Drive commented that behind the house is an eco-system of a field with an assortment of different species living in it, so moving the house back any further would disrupt the field and everything in it. If can be avoided, it would be appreciated.

Mr. Engl spoke, stating that he has been a Clarence resident for over 50 years, and he and his wife previously lived in the house immediately to the south of this property for 29 years. They have also purchased two additional lots over the years, with this one at 8800 Stahley Rd. being one of them. Mr. Engl explained that they wanted to stay in Clarence, and this was one of the best choices that they had. He knows that it does not add any technical relevance to this issue, but he would truly appreciate if that information would be considered when the board makes their decision.

Chairman Mills asked Mr. Bates if there were any alternative designs or ways to help mitigate the situation without the need to move the entire house. Mr. Bates responded that there are no other options, and that they also have a house on Conner Road that went through the same process. They were able to complete the building process without any issues of inspections. Mr. Bates stated again that the responsibility lays with Buffalo Modular Homes to assure the required inspections are completed in time.

Mr. Bates stated that the house remains where it should within the house box, they are not requesting that the entire structure be moved forward relative to the variance, and it is the depth of the garage that will affect the variance. Mr. Bates feels that 21' feet out of 114' while not perfect, is acceptable and he asks the board to take that in to consideration. The fact that the foundation is pre-fab and the house is modular, eliminates any ability to modify the designs to move the garage. Both the interior and exterior designs of the house have already been established relative to where the garage is supposed to sit.

Mr. Bengart asked Mr. Bleuer if neighbor notifications were received. Mr. Bleuer responded that neighbor notifications were sent and received, but no comments were submitted regarding this project.

Mr. Bleuer asked Mr. Bates what the south side yard setback of the house at the closest point is. Mr. Bates responded that on the south side to the corner of the garage it is 30', and 31' on the north side. Mr. Bleuer noted that if the garage was moved to the side of the house it would result in an 8' side yard setback, as it is currently designed at 22', and the minimum side yard setback is 12.5' at that location. Ultimately, that would also require a variance.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard to **approve** Appeal No. 2 with the following conditions:

1. the entire north and south sides of the property starting where the garage is to the rear of the house is to be landscaped with Arborvitae or similar.

This will prevent any adverse views of the garage being farther forward than what is allowed.

ON THE QUESTION:

Mr. Engl stated that a large berm already exists on the south side of the property, heavily planted with numerous pine trees. This berm is shared with the new owner which they sold their home to, and they do not have any objections to this variance.

Mr. Engl added that the house located to the north was also one of their lots, and his daughter lives there.

Mr. Engl stated that this is a non-issue with all concerning neighbors. It was a mistake made by the builder, and that Mr. Engl and his wife have invested thousands of dollars in floodplain site mitigation themselves, before the builder was involved because the floodplain levels were re-evaluated.

Mr. Engl commented that it is completely impractical for them to have to invest any more money in site work and mitigation to relocate the structure. Mr. Engl added that by not granting this variance, it will cause them to be without a home for many more months.

Mr. Bengart asked Mr. Engl if he would not be willing to accept the conditions that were in the motion made by Chairman Mills. Mr. Engl responded that no, he would not.

Mr. Bengart noted that there is another available option which would be to table the request so that the board can identify whether they feel there is sufficient foliage and berm already existing.

Chairman Mills stated that he did walk the site and is aware of the foliage along the south side. He did notice that there appear to be some gaps, and those gaps could be tightened up with some Arborvitae.

Chairman Mills noted that he was not aware a family member is residing next door, but added that as a board they are not only concerned with what is happening currently, but they also look to protect future homeowners.

Chairman Mills stated that as a board, they are also concerned with the view from the street, and this structure will be closer than it should be; therefore they need to mitigate that view as well.

Mr. Bates commented, and stated that if the addition of any foliage or trees as a condition, that Buffalo Modular Homes would undertake that without any additional cost to the owner.

Chairman Mills stated that there has been an influx of information for this request, and what happened with the project which led to this point.

Chairman Mills withdrew his first motion, Patricia Burkard withdrew her second to the first motion.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard to **table** Appeal No. 2 so that the board members as well as the owner and the applicant can discuss other mitigation techniques from a landscape perspective.

Jeremy Bates with Buffalo Modular Homes interjected, stating that because Mr. Engl preferred to have this tabled, which Mr. Engl spoke up in opposition of. Jeremy Bates continued, stating that with Buffalo Modular Homes offering to pay for the cost of the Arborvitae and other foliage needed, if that is something Mr. Engl would reconsider, then perhaps a new motion to approve could be offered contingent on the Arborvitae. Mr. Bates added that perhaps the motion could state to be confirmed, based on how much foliage is required dependent on what already exists.

ON THE QUESTION:

Chairman Mills stated that considering the current procedural status along with the information that has been uncovered, Chairman Mills feels it makes sense to table the item.

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

MOTION CARRIED

Mr. Bengart stated for the record, the reason the item was tabled is to determine whether the applicant and Buffalo Modular Homes are able to potentially come to any terms with additional cost for foliage to assist with blocking the views on the north and / or south sides of the property.

Chairman Mills responded that the north, south, and even the west if they had some Arborvitae in the front of the property, if they explore some landscape plans and foliage to help mitigate the effects.

Mr. Bengart stated for the record, that is the information we are looking for them to return with, and as soon as they are ready they will be placed on the next available Zoning Board of Appeals Agenda, Chairman Mills agreed to this.

Jeremy Bates interjected and proposed a sidebar to determine a new motion within this meeting, as it seems the foliage issue is something that Mr. Engl and Buffalo Modular Homes can briefly discuss offline in a sidebar, so that this can be completed within today's meeting.

Jeremy Bates noted that as previously stated, the Engl's have been without a home for some time, and if it is possible to avoid another long delay, that would be helpful for everyone involved. Mr. Bates is positive that within a few minutes of sidebar, they would be able to come to terms of foliage that would satisfy the board.

Chairman Mills stated that in order to keep this meeting moving forward, perhaps Mr. Bengart and Mr. Bates would be able to discuss this on the side.

Mr. Bengart and Mr. Bates left the meeting in order to further discuss.

Appeal No. 3

Tim Bass
Residential Single-Family

Town Code Reference;
§229-52

*Pre-existing non-conforming rear yard setback of
27'9"

Applicant requests a variance of 14' to allow a 13'9" rear yard setback for the construction of a porch addition attached to the principle structure located at 6090 Eastwood Road.

DISCUSSION:

Tim and Karen Bass were present virtually to further explain their request, stating that they are projecting the 13x14 ft. structure off the back of their garage. They have approached all of their adjacent neighbors, and all of their neighbors are in agreement of this request.

Mr. Bass stated that the reason they want this is because they like to sit in the backyard during the summer, and they always put up an aluminum structure with a canvas top. The high winds would destroy the structure or blow it away. They decided that building a structure off the back of their home would alleviate the weather issues they were having, and would also look nice as well as being permanent.

Mr. Bass noted that they looked around their neighborhood and found similar structures, with different roof lines. Mr. Bass stated that they would really like to have a structure that will blend in with the neighborhood, look nice, and serve its purpose.

Mr. Krey asked Mr. Bleuer to clarify the rear yard setback requirement.

Mr. Bleuer responded that it is the existing setback from the back of the garage to the property line, which was established by the survey as 27.9'. It was built prior to the 45' setback requirement, which identifies it as pre-existing non-conforming, and is why the entirety of this proposed porch would require the variance.

Mr. Krey referred to a photo submitted by the applicant, which was marked Exhibit A, and asked Mr. Bass to explain what he is doing with what is currently existing in the location.

Mr. Bass explained they currently have pavers, which they will have removed and a stamped concrete pad poured. The proposed structure will be built off the back of the garage, and fastened to the concrete pad. They also intend to install landscaping around the proposed porch as well.

Mr. McNamara commented that he is aware there is a lot of foliage in the applicant's backyard, which Mr. McNamara noted that the property is very unique with a shallow backyard. The Bass's rear neighbor is situated approximately 30' away.

Mr. McNamara stated that the proposed structure looks very nice, and it will fit very well.

The remaining board members agreed that the proposed structure will fit in well and look nice.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Patrick Krey, seconded by Richard McNamara to approve Appeal No. 3 as written.

ON THE QUESTION:

Mr. Krey stated that the reason he is voting for this request is due to the unique characteristics of the rear yard. He does not believe that there will be any undesirable change that will occur to the neighborhood. There is already a patio area in place, and this will improve the aesthetics of the area.

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

MOTION CARRIED

Appeal No. 4

Timothy & Patricia Troy
Traditional Neighborhood District

Applicant requests a variance of 855 sq. ft. to allow a 1,575 sq. ft. residential detached accessory structure (garage) located at 10553 Main Street.

Town Code Reference;
§229-66

DISCUSSION:

Timothy Troy was present virtually and explained that they would like additional storage room for their vehicles, and build a structure that is keeping in the character of their house. They feel it would enhance the appeal of not only their property, but the neighborhood as well. Additionally, Mr. Troy stated that it would also increase the marketability of their property.

Mr. Bass stated that they submitted some tentative drawings with their packet, and that they do have tentative plans but they would like to proceed with the plans based on what they submitted to the board.

Chairman Mills referred to the document titled “Garage Loft Plan” which Mr. Troy stated that there not be any loft area, only the car storage area with a covered patio. This document will be called Exhibit A.

Mrs. Burkard asked what the square footage of the house is, and Mr. Troy responded that it is approximately 2,700 sq. ft. Mrs. Burkard stated that the reason Mr. Troy needs the 1,575 sq. ft. is because of the porch off of the proposed structure. Mr. Troy responded that he was informed by the Town of Clarence that the exterior concrete would also be included in the square footage.

Mrs. Burkard asked if the proposed structure will resemble what is shown in Exhibit A, with the brick around the bottom, double doors, windows and shutters on the side. Mr. Troy responded that he isn't sure whether they will include the window above the garage door, because they have a good supply of cedar shingles they would like to use to cover the gable.

Mrs. Burkard asked Mr. Troy if he plans to run any business out of the proposed structure, and Mr. Troy responded no, they would like provide protection for their vehicles.

Mrs. Burkard asked if they will be running any electricity to the structure, and Mr. Troy responded yes.

Mr. Skaine asked Mr. Bleuer if this structure would be considered a secondary attached structure. Mr. Bleuer responded that it would be considered a detached accessory structure. Mr. Skaine asked about the shed in the rear of the property, and whether that would stay.

Mr. Troy responded that the proposed structure will go where the current shed stands, so that structure will be taken down.

Mr. Krey commented that the proposed structure is very large in size, and more than half the size of the existing house in comparison.

Mr. Krey stated that when he walked the property, he noticed that the house is located next to a law firm, which Mr. Troy clarified it was an accounting company, but that they are no longer in business. The owner now runs an art museum with a sculpture park.

Mr. Krey asked Mr. Troy if he has looked in his neighborhood to determine whether any neighbors have similar detached accessory structures, which Mr. Troy responded yes he has, and there are multiple ones.

Mr. Krey asked Mr. Troy whether he has considered moving the proposed structure closer to the house and attaching it with a breezeway. Mr. Troy responded no, he feels it would not be appropriate due to the way the house is laid out as well as the current driveway situation.

Mr. Troy stated that it will be approximately 35-40 ft. behind the house and caddy corner to the west. They have a double width asphalt driveway, and that at the end of the driveway is where the proposed structure is planned to be.

Mr. McNamara asked to confirm that the shed currently on the property will be removed, not just relocated on the property. Mr. Troy confirmed that the shed will be moved off of the property.

Mr. McNamara asked how many trees will need to be removed. Mr. Troy responded that two large trees as well as multiple smaller trees that are located around the shed, all need to be removed. It will be cleared out just enough to remove the potential of trees falling on the structure.

Mr. McNamara noted that in the summertime the trees provide adequate foliage, which will buffer the view from the neighbors. He also stated that he likes the design of the proposed structure, it is situated in a way that won't be overbearing to the neighbors or from the street.

Chairman Mills asked Mr. Troy if he would agree if the board made it a condition that there is to not be any business run out of the proposed structure. Mr. Troy agreed, adding that it will only be storage for cars and lawn equipment.

Chairman Mills asked Mr. Troy if he would agree to the shed removed from the property being another condition of approval. Mr. Troy confirmed that he will either take it apart himself or have it hauled away.

Chairman Mills confirmed with Mr. Troy that there will be no business run out of the proposed structure. Mr. Troy stated there will be no business run out of the structure. He is a Real Estate Appraiser and has his office in his home. They are looking to enhance the marketability of the property with this proposed structure.

Referring to Exhibit A which is titled the "Garage Loft Plan", Chairman Mills asked Mr. Troy to assure the board that their final plans and what is built will substantially resemble the photo that was submitted. Mr. Troy confirmed yes, there will be a stone or brick material along the bottom of the structure.

Chairman Mills stated that in Mr. Troy's packet submission, part of his reasoning for this request is that two of his vehicles have insulation materials that are made of soy, which attract rodents. Mr. Troy explained that the new car companies are using soy based materials for insulations and wire covering, which many small animals and rodents are attracted to. Mr. Troy added that they have already had several thousand dollars in damages that have incurred due to these issues.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Richard McNamara, seconded by Raymond Skaine to approve Appeal No. 4 as written with the following conditions:

1. No business is to be run out of the structure;
2. Shed currently on location is to be removed

ON THE QUESTION:

Chairman Mills stated that this parcel is unique from other residential applications in that it has a commercial parcel next to it, and the parcel itself is very deep. Also, there is substantial foliage which will redact the different views that may occur related to this new structure. Chairman Mills also stated that the design of the structure will help to mitigate its size, helping it to fit in well with the existing home.

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

Appeal No. 5

Thomas Kelkenberg
Traditional Neighborhood District

Applicant requests a variance of 656 sq. ft. to allow a 1,376 sq. ft. accessory structure (garage and porch) located at 9575 Clarence Center Road.

Town Code Reference;
§229-66

DISCUSSION:

Thomas Kelkenberg was present virtually to further explain his request, stating that they moved in to the house in November. There is currently a detached garage as well as a small shed on the property. Currently, he would remove the structure, as the foundation is unstable. He would like to build a new garage and make it a little bigger in order to store several pieces of equipment as well as a tractor and four wheeler inside.

Mr. Kelkenberg stated that almost half of the 656 sq. ft. that he is requesting is the porch on the outside, which faces the west. His wife would like to decorate it with her furniture and other items. Mr. Kelkenberg stated that he has attempted to make it smaller to the best of his abilities, but ultimately he would like to have the room to store his stuff inside so that it is not sitting in his driveway.

Mr. Skaine stated that he agrees the existing garage should come down, as it is not in good condition. Mr. Skaine stated that he believes the neighbors won't be affected by this.

Mr. Skaine asked Mr. Kelkenberg if he plans to conduct any business from the proposed structure, and Mr. Kelkenberg responded no.

Mr. Krey asked if the structure was connected to the house with a breezeway, would it still require a variance. Mr. Bleuer responded that in the Traditional Neighborhood District (TND) there is a general

accessory structure code, which simply states that accessory structures shall be no greater than 720 sq. ft. and does not specify whether they are attached or detached. Mr. Bleuer stated that is why this item is on the agenda, whether it is attached or detached, if it is over 720 sq. ft. it would require a variance, per his understanding of the code.

Mr. Kelkenberg stated that he is planning to attach the proposed structure to the house with an enclosed entry way.

Mr. Krey stated that the neighboring property to the east appears to have a garage that extends back a similar distance. Mr. Kelkenberg responded that it is an in-law apartment which resembles his proposed structure.

Mrs. Burkard asked about the porch, and asked what the actual size of the garage is. Mr. Kelkenberg responded that the garage will be 22x48 making the total square footage without the porch 1,056. Without the porch he would only be 336 sq. ft. over code.

Mrs. Burkard asked for clarification as to where the garage and house will be connecting, Mr. Kelkenberg explained the layout.

Mrs. Burkard asked if the siding and other materials will match the house, and if there will be electricity in the garage, and Mr. Kelkenberg responded yes.

Mr. McNamara stated that he likes the way the proposed structure looks, and it will fit in well with the rest of the area. He has a concern about the drainage, because the back area of the yard appears to be lower. Mr. Kelkenberg responded that he has the lower lot amongst his neighbors, and he will work with the Town of Clarence as necessary to assure there are no drainage issues.

Chairman Mills comments that in terms of the size of the propose structure, is there any room to reduce the size at all. Mr. Kelkenberg responded that he did in fact scale it down and move it back a bit, but with all of the items he would like to store inside of the structure, he is at the minimum right now.

Mr. Bleuer stated that with the information heard tonight regarding the attachment of the proposed structure via a breezeway, with the porch and laundry room area since it will be attached and only considered a garage which is 8x14 it reduces the total square footage to 1,056. The maximum allowed without a variance is 720 sq. ft. total, reducing the total variance request to 336 sq. ft.

In regards to Public Participation no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** Appeal No. 5 with the following condition:

1. No business to be operated out of the structure.

ON THE QUESTION:

Mr. Krey stated that the proposed structure will fit in well with the neighborhood, specifically from the street.

Mr. Krey also stated that he does not believe the structure will bring an undesirable change to the neighborhood because it will replace an existing garage. It will extend further back, but as discussed, the house immediately to the east also has an accessory structure which also extends further back on the property.

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

MOTION CARRIED

At this time, Appeal No. 2 was **re-opened** to be re-heard upon request by Mr. Bates from Buffalo Modular Homes.

Motion by Ryan Mills, seconded by Patrick Krey to re-open Appeal No. 2.

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

MOTION CARRIED

Mr. Bates made a factual revision to the potential cost of moving the whole structure, he originally suggested a cost of approximately \$50,000 but should have clarified his statement further to state that the house has been set on the foundation. The basement floor has been poured, which makes the option of moving the entire structure much more complicated and raises the projected cost to approximately \$150,000. This would include deconstructing the house, moving it, breaking up the concrete floor and moving the foundation.

Mr. Bates feels this updated information makes the request for a variance more palpable.

Mr. Bates further stated that they have spoken with Mr. Engl about this, and have assured him that Buffalo Modular Homes would without cost to him undertake any additional landscaping, foliage, augmentation, on either or both the south, north, and west sides of the property.

Mr. Bates stated that because Mr. and Mrs. Engl have incurred such high additional costs, and have been without a home for an extended period of time which has basically left them homeless as well as their long standing status as Town of Clarence residents that the variance be granted. With the approval of the variance, Mr. Bates is hopeful the requirement for any mitigation site changes for the requirement of the issuance for the Certificate of Occupancy (CO). The Building Inspector would issue the CO based on his satisfaction with not only the code compliance, the finished house, but also for site work as well.

Mr. Bates would like to know if there would be room for the requirement for any site, landscaping, and foliage to be governed by the issuance of the CO thereby allowing the variance to be approved. Mr. Bates pointed out that with the approaching spring and summer months, they will be in a better position to see what is needed in terms of foliage.

Mr. Bengart stated that while he understands the circumstances the builder and the homeowners are in, the fact that a motion was made and seconded does not automatically mean the motion would be approved. Mr. Bates is assuming that the remainder of the board would vote in favor of it, as well as the two members making the motion.

Mr. Bengart added that as to whether the zoning board would be willing to place this in to the hands of the Building Department and a CO, there would need to be much more specificity as to what the conditions would be.

Chairman Mills had some additional questions based on the new information that has been provided to the board. The new estimate that Mr. Bates gave to move the house back is now a rough estimate of approximately \$150,000.

Chairman Mills asked Mr. Bates for the total square footage of the house as well as the overall project cost. Mr. Bates responded that the total cost is approximately \$390,000.00 excluding the lot with a square footage of 1500 + square feet.

Chairman Mills asked how long the project has been active, and Mr. Bates estimated that it has been since summer of 2021.

Mr. McNamara asked what state the house is in currently, is the heat installed, plumbing finished, water lines hooked up. Mr. Bates responded yes the basement, heat, plumbing are all complete. Water lines are not connected to the street yet. The mechanicals in the basement are finished, and because it is a modular home it is 85% finished at this point with cabinets, fixtures, flooring, appliances have all been completed. Mr. McNamara asked how many days away from completion on the inside of the house they are, and Mr. Bates responded approximately 3 weeks.

Mr. McNamara asked how long is needed to get the garage completed when given permission, and Mr. Bates responded that they would be able to build the garage in 3 days. Mr. Bates stated that the driveway and other outside work is weather dependent, they normally would get a temporary Certificate of Occupancy, and finish as the weather permits.

Mr. McNamara asked how much time all together is needed before the homeowner can move in to the house, Mr. Bates responded the because Buffalo Modular Homes has been the cause of the delay, they would schedule their employees and the work to be done as soon as possible. Mr. McNamara asked if May 1, 2022 which is 7 weeks away would be an appropriate date to give for the homeowner's to be able to move in by. Mr. Bates responded yes.

Mr. McNamara reiterated Chairman Mills' statement of needing to consider not only the current neighbors, but any future neighbors as well. He understands that this is a tough situation and that a mistake was made which is not the homeowner's problem, but they are suffering the consequences.

Mr. McNamara noted that as Mr. Bengart stated, the board needs a plan and something written out on paper. They cannot pass it on to the Building Department, it's not their responsibility.

Mr. Bates stated that while he understands what Mr. McNamara is saying, he feels it would make more sense for the board to state what they want to see for landscaping, then the landscaper as well as Buffalo Modular Homes would know what to prepare to present to the board. He is concerned that they would

have a landscaper draw up designs, only to have the board not approve of the designs and delay the process even longer.

Chairman Mills stated that they are going to attempt to provide some insight and guidance as to what they are looking for. From his perspective Buffalo Modular Homes forced the garage up 22 ft. further than it should be, altering views from the north, south, and west properties. The east has a large natural buffer, so they are not concerned with the view from that property. Chairman Mills would like to see some landscape plan that shows mitigation from the west, north, and south sides. For the north and south sides, it would run the length of the garage structure, which would be at least 22 ft. The west side would be the width of the garage area or what aesthetically looks the best from the owner's side along the west side.

Chairman Mills added in regards to height, at least a few feet to start, and something that will grow quickly is his preference.

Mr. Krey agreed with what Chairman Mills described.

Mrs. Burkard also agreed with Chairman Mills, and added that she thinks the homeowners would want to see exactly what the landscape plans would look like.

Mr. Bengart reiterated that the board is not voting tonight, conceptually to see if the board members are in favor when they see a landscape plan. Not to vote on ultimately if it is acceptable to them.

Mr. Skaine agreed with Chairman Mills and would like to see it with the conditions noted.

Mr. McNamara noted the berms on the south side, and commented on not causing a problem with extra bushes and drainage. He stated covering up the garage, bringing the landscaping more towards the street, and perhaps have the board conduct another site visit based on the landscaping plan.

ACTION:

Motion by Ryan Mills to table Appeal No. 2.

Mr. Bates asked for clarification, noting that he understands wanting to camouflage the garage on the north and south sides, but is unclear on the west side. There will be a driveway leading directly to the garage, with no place to put in landscaping. Chairman Mills responded to the left or right of the driveway is where they are asking the landscaping to be placed, because the garage is closer to the street than it should be.

Motion by Ryan Mills, seconded by Patricia Burkard to table Appeal No. 2.

ON THE QUESTION:

Chairman Mills added that the applicant has heard from the board members regarding their preliminary expectations for the next meeting and what they would like to see in terms of landscaping to help to mitigate the situation.

Mr. Bengart interjected, stating that to his understanding, the following items need to be completed;

1. landscape plan
2. The items to be laid out somewhere on the site, so that if someone wants to visit the site they would have the ability to do so, before the next time this appears before the board.

- 3. The fact that they are asking for this information, does no guarantee they will prove what is presented to them at the next meeting.

Mr. Bengart wants to be sure that the applicant / homeowners understand that and agrees to the motion, the reason for the motion, and the understanding that it doesn't guarantee it will be a favorable motion.

Mr. Engl understands and agrees.

Mr. Bleuer stated that in order for this item to be placed on the April 12, 2022 Zoning Board of Appeals agenda, the information would need to be submitted no later than March 29, 2022

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

MOTION CARRIED

Motion by Patricia Burkard to **adjourn** the meeting at 7:35 p.m.

MOTION CARRIED

Amy Major
Senior Clerk Typist