Town of Clarence

One Town Place, Clarence, NY

Zoning Board of Appeals Minutes
April 12, 2022

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

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey
Raymond Skaine	Richard McNamara

Zoning Board of Appeals members absent:

Patricia Burkard

Town Officials present:

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

Other Interested Parties:

Jennifer Batt	Nancy Higgins	Patrick Higgins	Doug Engl
Michael Thorpe	John Schmidt	Bernard Zephro	Jeremy Bates
Grace Sokolowski	Sean Hughes	Dominique Knop	Juan Rumbo
Joseph David	David Brace	Gayle Brace	

Motion by Ryan Mills, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on March 8, 2022

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

MOTION CARRIED

Chairman Mills stated that the Zoning Board has the ability to approve, deny, or table a request.

OLD BUSINESS

Appeal No. 2 (from the March, 2022 meeting)
Doug and Tina Engl
Residential Single-Family

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

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

DISCUSSION:

Jeremy Bates from Buffalo Modular Home was present, representing the applicant. Mr. Bates stated that at the March 8, 2022 the Zoning Board had some recommendations that they suggested for the variance request. These included additional landscaping to mitigate the view of the garage from the road.

Mr. Bates stated that they have updated their plans, and have taken in to consideration the character of the neighborhood.

Chairman Mills stated that Exhibit A is a 22-page document which includes information such as neighbor setback from the road as well as multiple proposals for foliage.

Chairman Mills referred to the landscaping proposal in the document, asking Mr. Bates to explain to the board what their plans are for this.

Mr. Bates stated that the rendering is of the completed garage and porch, showing five Blue Spruce trees that replicate the existing older Spruce trees on the southern lot line of the property. It also includes one Arbor Vitae at the front of the house. Mr. Bates stated that this is the proposal that the homeowner prefers.

Mr. Bates noted that the second proposal simply has additional trees on the property, specifically Arbor Vitae on both sides of the house.

Proposal three indicates no landscaping is needed due to how far back the home is located within the existing Spruce trees.

Mr. Skaine asked how big the Colorado Blue Spruce will be, Mr. Bates responded that they will be 8-12 ft. in height.

Mr. Bates explained that option 2 is basically the addition of some Arbor Vitae along with the existing Spruce trees already on the right side of the garage. Where the garage would stop is further back from where the existing Spruce trees are currently located on the south side, therefore it didn't make sense to bring the Spruce trees forward any further.

Mr. Bates stated that he felt bringing the trees up further toward the road would create a sight line issue for traffic on the street, and that the existing Spruce trees already provide substantial privacy.

Mr. Krey asked which proposal the applicant prefers, Mr. Bates responded proposal #1 on page 16 of the document they provided.

Mr. McNamara asked regarding proposal #1, if there will be a berm or trees along the grade. Mr. Bates responded that it will be a minor berm, with topsoil and mulch. They were not considering additional height beyond the normal landscaping bed.

Chairman Mills asked what the negative implication would be to placing some Colorado Blue Spruce set back a bit on the south side. Mr. Bates responded that there is no negative, but that area is already thick, he did not think it was necessary.

Mr. Bates reviewed the landscaping and neighboring homes.

Chairman Mills noted that the view from the street, to the right of the driveway is where he would like to see some Blue Spruce as well. Chairman Mills noted that they have done a good job on the left side of the driveway, but the right side remains exposed, and that is where the garage will be seen.

Further review of the document and location of additional trees continued.

Regarding Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills to **approve** appeal No. 2 under Old Business with the following conditions;

- addition of 3 Colorado Blue Spruce to the south of the driveway.
- not to exceed 10 ft. out from the existing bed.
- as well as everything encompassed in landscape proposal no. 1, page 16 of Exhibit A. This includes 5 Colorado Blue Spruce trees at the front left corner of the property, and one Green Emerald Arbor Vitae at the front left corner of the house.
- the Blue Spruce are to be 8-12 ft. in height.

ON THE QUESTION:

Dough Engl, homeowner and applicant, confirmed that he has heard, understands, and agrees to these conditions.

Chairman Mills stated that while this is a variance request of 22 ft., the applicant has gone to great lengths to mitigate the views from all angles. They have provided various landscape proposals, they are adjusting the size of the trees, mitigating the view from all angles.

The applicant has also provided documentation of nearby homes and their distance from the street, to show that it is not a huge deviation from the character of the neighborhood.

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

MOTION CARRIED

NEW BUSINESS

Appeal No. 1
Grace Sokolowski
Residential Single-Family

Individual requests a reversal of the determination made by a Zoning Inspector that chickens are not allowed at the property located at 4545 Greenbriar Road.

Town Code Reference;
§229-163(E)

DISCUSSION:

Grace Sokolowski, owner of the property, as well as Mark Sokolowski, to further explain and discuss her request.

Ms. Sokolowski stated that she feels the Zoning enforcer's actions incorrectly applied the zoning law. Her chickens are not for Customary Agricultural Operations, as was indicated in the letter of complaint.

The Agricultural and Farmyard Protection Plan prepared by the Town of Clarence defines agricultural operations as activities conducted by a farmer, on a farm for the sale of agricultural products and for the use of farm labor. Ms. Sokolowski stated that she is not a farmer, nor does she own a farm. She is not selling anything, and she is not employing anyone to care for her pets. The chickens are being used solely for the use of enjoyment. She has never intended nor desired to use the chickens for meat, or to sell their eggs for profit, because she is not a farmer.

Ms. Sokolowski stated that she assumes the complaint was filed during a short period of time where she was in the process of rehoming a rooster that had been adopted in a batch of 6 chicks. During the time in which they were rehoming the rooster, they used a no-crow collar in order to reduce the noise. They determined that was a better option than slaughtering him. They successfully rehomed the rooster one day prior to receiving the notice of complaint.

The chickens are well kept, well fed, and do not make noise any more than an average pet in the neighborhood. The coop is not visible from the road, and therefore should not be bothersome at all to the aesthetics of the neighborhood, unless an individual trespasses on to the property, which is then a significantly greater offense.

Ms. Sokolowski stated that her neighbor next door without a fence, is supportive of the chickens. She was aware that her other next-door neighbor, whose property is separated by a vinyl fence, is the neighbor who filed the complaint, without ever speaking with her first.

Ms. Sokolowski stated that the neighbor that filed the complaint stated that the view of the chickens from her master bedroom is of great bother to her. Mrs. Sokolowski also pointed out that this neighbor cut down a line of trees which mitigated the view in to her backyard.

Ms. Sokolowski reviewed the multiple issues that have occurred with her neighbor.

Ms. Sokolowski stated that the New York State Zoning Enforcement Publication suggests that a town may have a provision for the zoning enforcement officer to enter a premises. Ms. Sokolowski stated that

because she is so alarmed by this supposed documentation, she continued with her research. She learned that the Zoning Enforcement in town and village courts for the New York State Magistrate's Association suggests that there are only three ways for the zoning enforcement officer to legally inspect a property in New York State. One is to observe the property from a public thoroughfare, two is by obtaining the owner's permission, and the third is by obtaining an administrative search warrant or other court order directing entry on to the property for an inspection. Regarding point one, there is no vantage point from public thoroughfare that would allow documentation. Second, Ms. Sokolowski did not give permission to enter her property, lastly point three, which was the course of action taken. Ms. Sokolowski stated that when she requested additional documentation, she was informed by Jonathan Bleuer that her property was not accessed at all by the Zoning Enforcement Officer.

Ms. Sokolowski stated that she was made aware through email documentation which was disseminated to the zoning board members, just how the documentation of the chickens occurred. Per the email, Steven Leising, Zoning Inspector, observed the chicken operation from Ms. Sokolowski's property line. This is not listed as an acceptable way to obtain information in New York State.

Ms. Sokolowski continued to refer to the Town of Clarence Code for Customary Agricultural Operations, and the term Animal Husbandry. Ms. Sokolowski stated that she cares for her chickens in the same way any other person cares for a domestic animal.

Applying this would mean that any domestic animal including dogs would not be allowed in Clarence.

Ms. Sokolowski stated that she believes the determination made by the Zoning Inspector is erroneous, and requests that the Zoning Board reverses the determination.

Mr. Skaine asked Ms. Sokolowski if she was aware when she started raising the chickens if the Town of Clarence had a law against it. Ms. Sokolowski responded that the only law that she was aware of was for the Customary Agricultural Operations located on 5 acres or less.

Mr. Skaine asked Jon Bleuer to please read the exact Town Board ruling on this matter. Mr. Bleuer stated that as stated in the packet provided, Customary Agricultural Operations in the Residential Zone are only allowed if the property is over 5 acres, or is pre-dated with proof of the activity itself.

Mr. Skaine asked Ms. Sokolowski if she was aware of that law. Ms. Sokolowski responded yes, she was, but that this is not a Customary Agricultural Operation.

Mr. Krey asked Ms. Sokolowski what she does with the chickens that are on her property, Ms. Sokolowski responded that they are just for enjoyment.

Chairman Mills asked Ms. Sokolowski how many chickens there are currently on the property, if there is a plan for more, and whether she is breeding them. Ms. Sokolowski responded that there are four chickens, she does not plan on more, and she is not breeding them.

Chairman Mills asked Ms. Sokolowski if she uses the eggs from the chickens as well as shares them with her neighbors, Ms. Sokolowski responded yes, she has.

Chairman Mills asked Ms. Sokolowski whether she has ever sold the eggs or the chickens, Ms. Sokolowski responded no. Ms. Sokolowski also stated that she has never had a rooster aside from the one that she previously referred to.

Chairman Mills asked Ms. Sokolowski who cares for the chickens, and whether she has ever hired anyone to care for the chickens. Ms. Sokolowski responded that she and her boyfriend care for them, and she has never hired anyone to take care of them.

Chairman Mills asked Ms. Sokolowski if the chickens ever come in to the home. Ms. Sokolowski responded no, they do not. They do occasionally let them run around their coop when she is outside with them.

In regards to Public Participation, the following spoke:

1. Jennifer Batt of 4555 Greenbriar

- Gave a summary of the history and assessed value of the homes in the neighborhood, and how having chickens will lower the value of the neighborhood.

- Ms. Batt stated that she can see the chicken coop from her window.

- Ms. Batt confirmed that she took the photos of the chicken coop from her side of fence with a tele-photo lens, and that she remained on her own property.

- Chairman Mills requested Ms. Batt share the photo from her backyard that she is referring to, and it was marked Exhibit A.

- Ms. Batt confirmed that she notified the Town of Clarence when she heard the rooster squawk, as she noted roosters are quite loud.

- Ms. Batt stated that waivers for individual chicken operations should not be permitted.

- Ms. Batt referred to a Buffalo News article from 2020 regarding the Bird Flu outbreak. Referring to the part of the article recommending that protective clothing be worn when handling birds during the outbreak. Ms. Batt described what she has witnessed Ms. Sokolowski wearing when she has gone out to the chicken coop. This clothing included a bathrobe and slippers, but no protective covering.

- Ms. Batt continued to refer to news reports regarding the Asian flu, and asked the Zoning Board if they wanted to get in to allowing residents in town have chicken coops in their backyards, because she does not think they should get in to that.

- Ms. Batt stated that she keeps a roster of the residents on the street that she started many years ago.

- Ms. Batt noted that if you can afford a home on Greenbriar Rd., then you don’t need to raise eggs, you can afford to purchase them. Ms. Batt continued by reviewing the price of eggs at local grocery stores. Ms. Batt stated that the only reason to raise chickens in a backyard is for entertainment, they are not household pets. It is like a hobby, and should not be allowed.

- Ms. Batt read comments that she said she collected from neighbors, all of whom wish to remain anonymous.

- Ms. Batt stated that she strongly encourages the Zoning Board to withhold the decision because chickens in the neighbor's backyard will greatly affect her lifestyle.

2. Dawn VanFossen of 4535 Greenbriar Rd.

- Ms. VanFossen stated that she lives on the other side of Ms. Sokolowski, and she does not have a fence between their properties; therefore, her backyard is in close proximity to Ms. Sokolowski's.
- Ms. VanFossen stated that the chickens are not noisy, and are not dirty.
- Ms. VanFossen also noted that the property behind them is land locked, and owned by the Town of Clarence, so there is no possibility of any homes being built behind them. The chickens are not visible from the street therefore the only people that can see them are herself and Ms. Batt. Ms. Batt has a 6 ft. fence so if she is seeing them, it is because she's looking for them.

Mr. Bleuer identified that the Planning and Zoning Department has received 4 items of correspondence for this item from the following residents:

- Jennifer Batt at 4555 Greenbriar on the opposition.
- Kathy and Paul Widmayer of 4565 Greenbriar in support.
- Dawn VanFossen of 4535 Greenbriar in support
- Kevin McMahon of 4550 Greenbriar in support

Chairman Mills asked Ms. Sokolowski when she acquired the property. Ms. Sokolowski responded that she acquired the property in March, 2021. Chairman Mills asked Ms. Sokolowski when she started raising the chickens. Ms. Sokolowski stated that they adopted the chicks in September, 2021.

Ms. Skaine asked Ms. Sokolowski how she cleans the coops. Ms. Sokolowski responded that she puts the waste in to plastic bags then in to the trash.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara to **uphold** the determination of the Town of Clarence Zoning Inspector, that chickens are not allowed at 4545 Greenbriar Road located in the Residential Single-Family zone.

ON THE QUESTION:

Patrick Krey stated that he sympathizes with the testimony as heard by Ms. Sokolowski, and that he personally feels that the Town of Clarence should follow the same regulations as neighboring towns that permit chicken coops. Our current code clearly does not permit them in the Residential Single-Family zone. It is prohibited by town code unless you have 5 acres or more or reside in the Agricultural district.

Mr. Krey stated that in terms of what he saw upon inspection of the property, it was clean and there was no noise or scent at all. He agrees with the neighbors that stated that you wouldn't even know the chicken coop existed unless you were physically looking at Ms. Sokolowski's property.

Mr. Krey noted that he would be shocked if this chicken coop would lower any property values any more than a neighbor getting a dog would lower a property value.

The Zoning Board of Appeals is a quasi-judicial body, we are not a law-making body, and are not enforced to change existing town code. Current town law prohibits chicken coops to be located on this lot.

Chairman Mills stated that based upon the evidence that they have heard, photograph evidence as well as testimonial and documentation evidence, this does meet the definition of Agricultural Operations as defined by the Town of Clarence Town Code.

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

MOTION CARRIED

Appeal No. 2

Alexander Rankie
Traditional Neighborhood District and Residential Single-Family

Applicant requests a variance:

1. of 0.209 acres to allow for a 0.25-acre parcel; and
2. of 26' to allow a lot frontage of 99' fronting Bodine Road;

located at 10821 Main Street.

Town Code Reference;

1. §229-49
2. §229-50 *newly proposed lot within Residential Single-Family zone.

DISCUSSION:

Attorney Laura Colca from the law firm Goldberg Segalla, present and representing Alexander Rankie as well as the applicant himself, Alexander Rankie.

Ms. Colca stated that as identified through the application submission, Mr. Rankie owns the property at 10821 Main Street, which runs from Main Street to Bodine Road.

Mr. Rankie is requesting a variance so that he can carve out the lower portion of the property that faces Bodine Road, and build a single-family residence there.

Ms. Colca reviewed Mr. Rankie's requests, stating that he would like to build a 1500 sq. ft. home and rent it out. Ms. Colca added that according to the Town of Clarence Master Plan, the goal is to offer more affordable single-family homes.

Ms. Colca continued to review the Town's plans and how they feel it relates to this minor variance request, in relation to the Affordable Housing Act.

Mr. Rankie stated that he believes each and every one of us has something to give back to the community, and he feels his ability to offer affordable housing is the way he is able to do this.

Mr. Krey stated that he understands the benefit to the community, but asked Mr. Rankie what the benefit of this variance would be for him. Mr. Rankie explained that he currently owns the property at 10821 Main Street which contains a house with 4 units. It would not be feasible for him to purchase land and

build the residence such as the one he is proposing, it makes more sense to build on the land he already owns, in the same proximity as the units he also owns.

Mr. McNamara asked Mr. Rankie whether he has considered adding units to the property that he already owns. Mr. Rankie responded that adding another two units makes it a Commercial property. Among other things, it limits the amount of finance options available to him.

Mr. Skaine stated that he wasn't in favor of this project when it was originally proposed because Bodine Rd. is a very narrow street, and this variance is not a minor request. Mr. Rankie responded that it is a minor request in that 80% of the houses in this area are single-family homes, and it isn't something that doesn't conform with the general characteristics of the neighborhood.

Mr. Skaine stated that the residents on Bodine Rd. are pushed in enough as it is, and to add another house makes it very complicated and overly populated.

Ms. Colca stated that if you view Mr. Rankie's property straight on, it appears that a large portion is vacant, with more vacant property to the left. There is a business on the other side, Ms. Colca stated that they have spoken to the business owner who does not object to the proposed house. Ms. Colca stated that she is not sure why this request is out of character whatsoever with the configuration of the street.

Chairman Mills asked Mr. Rankie if he was aware when he acquired the property that a variance would be needed to accomplish his goal. Mr. Rankie responded that he was unaware until he acquired the back lot. Mr. Rankie stated that he didn't come up with the idea until seeing the back lot, and realizing that there is only one other affordable housing unit in all of Clarence. As a concerned citizen he thought it made sense to develop another option.

Chairman Mills asked Mr. Rankie if he can give example of any other lots close to this property that would be similar in size to what he is proposing for this parcel. Ms. Colca stated that they are unable to provide this information tonight, but can work on obtaining it for them at a later date.

Chairman Mills asked Mr. Rankie what his budget is allotted for this project. Mr. Rankie commented that he plans on approximately $200,000 -$ 250,000 for this project.

Chairman Mills asked Mr. Rankie if he has any additional information to provide the board, aside from the first and second floor plans. There are no elevations or other architectural plans provided to show what he is planning.

Mr. Rankie responded no, he does not have any additional plans, as he was waiting for the approval from the Zoning Board then he would proceed like any other single-family home would.

Chairman Mills asked Mr. Rankie if he plans on having a garage, Mr. Rankie responded no. The plans are for a two-story, three-bedroom, slab basement dwelling.

In regards to Public Participation, no one spoke.

Mr. Bleuer identified one piece of correspondence received, a letter of concern from Duane and Linda Chaffee of 10838 Bodine Road. Chairman Mills read the letter, labeled Exhibit A in to the record. The

letter stated that they cannot endorse the variance request for 10821 Main Street, with the following points in summary:

- 99’ frontage does not meet the town minimum
- depth of the lot would only be 190’
- approximate area is only .25 acres which is approximately ½ of the Town of Clarence minimum lot size and to their understanding the proposal is for a 960 sq. ft, two-story home which is relatively small.
- Also, they asked whether Mr. Rankie plans to live there or rent it

Ms. Colca responded to the letter, stating that the Chaffee’s own the commercial property next door, they don’t live there nor do they own the business that is operating on the property. Ms. Colca noted that their concerns about children and noise in the neighborhood is unfounded since they don’t reside there.

Mr. Colca stated that the issue regarding the depth of the property is not being addressed on the variance.

ACTION:

Motion by Patrick Krey, seconded by Ryan Mills to **deny** Appeal No. 2.

ON THE QUESTION:

Mr. Krey stated that Mr. Rankie stated the economic and benefit to him would be the addition of two more units to rent out. As testimony revealed, he could expand the existing structure currently on his lot without dividing it.

Mr. Krey feels that the benefits to Mr. Rankie outweigh the benefits to the community.

Additionally, is would have a negative impact on the character of the neighborhood due to the fact that there would be such a small lot in the neighborhood. It doesn’t fit in with the character of the neighborhood.

Chairman Mills added that they are asked to look at 5 factors when reviewing a variance request. The first one is whether the area variance will change the character of the neighborhood. Chairman Mills believes based on the evidence and testimony heard, as well as looking at other nearby adjacent parcels in the neighborhood, that based on the proposed size it would change the character of the neighborhood.

Second is whether there are alternatives which do not require a variance; Chairman Mills noted that there are alternatives available here including additions to the existing structure.

Third is if the area variance is substantial; Chairman Mills stated that they do believe it is substantial, both prongs would be substantial.

Fourth is the effect on the physical environmental conditions; Chairman Mills stated that they feel based on the size, the physical environmental conditions would be affected.

Finally, if the situation is self-created; Chairman Mills stated that after hearing testimony from the applicant that the building was recently purchased and not considered before it was purchased.

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

MOTION CARRIED

Mr. Rankie asked if he were to add two more units to the current building located on the property, would he need to return to the Zoning Board due to the zoning changing from Residential to Commercial. Mr. Bleuer stated that Mr. Rankie could explore the opportunities with the Planning Office, and it would go through the Town Board if Mr. Rankie were to submit an application.

Appeal No. 3
Juan Rumbo
Agricultural-Rural Residential

Town Code Reference;
§229-41(A) *Average front yard setback of 43'

Applicant requests a variance to allow a 150' front yard setback for the construction of a single-family home located at 7380 Goodrich Road.

DISCUSSION:

Mr. Rumbo was present, and added that safety is a main reason for this request. Also, there is a barn located on the property next door and he would like to set his home further away from the barn.

Mr. McNamara asked how big of a house Mr. Rumbo plans to build. Mr. Rumbo responded approximately 3,700 sq. ft. two-story single-family home.

Mr. McNamara asked Mr. Rumbo if the property is wet, Mr. Rumbo responded kind of.

Mr. Bleuer stated that the average setback is approximately 43'. That average is based on properties located on the same side of the street, within 500'.

Mr. Skaine asked if the barn that Mr. Rumbo referred to was there when he purchased the property. Mr. Rumbo responded yes. Mr. Skaine stated that he is not typically in favor of allowing a setback that far, because then it puts the property in the neighbor's backyard.

Also present was co-applicant Dominique Knop, who noted that by placing their proposed home further back on the property, it actually moves them away from their neighbor's backyards. Also, they plan to plant evergreens to help mitigate the view.

Mr. Krey stated that it is a sizeable request, and when the neighbors are in their backyards, they will have full view of Mr. Rumbo's house.

Mr. Krey asked Mr. Rumbo if they have given any consideration to not going back as far. While he understands the reasoning for the request, maybe not set it back so far.

Mr. Rumbo stated that they have 400' and they would like to enjoy all of it. They have two dogs, and plan to have children in the future, so for the sake of safety, they would like to be further away from the road. They are willing to put in pine trees to help with the view for the neighbors.

Chairman Mills asked how long they have owned the property, and when they plan to build. Mr. Rumbo responded that they have owned the property for approximately a year, and hope to start building soon.

Chairman Mills asked Mr. Rumbo if they would be able to do anything less than the requested 150' and still accomplish their objectives.

Mr. Rumbo and Ms. Knop stated that while requesting neighbor notification signatures, one of their neighbors commented that building their home further back would be the right thing to do.

No neighbor comments were received.

In regards to Public Participation, no one spoke.

Mr. McNamara stated that if the applicant is willing to plant pine trees along the north side to mitigate the view, that is acceptable.

The existing barn on the neighboring property to the south provides an adequate buffer between those two parcels.

Chairman Mills asked if the property to the south is a business, Mr. Rumbo said he believes they rent out the barn.

ACTION:

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

1. Applicant plants evergreen trees no less than 4-6 ft. in height, spaced approximately 15 ft. apart, starting at the front of the neighbor's house located at 7420 Goodrich Road, going back west to the rear of the applicant's house to provide a natural buffer.

The applicant heard, understands, and agrees to the condition.

Raymond Skaine	Nay	Richard McNamara	Aye	Patrick Krey	Aye
Ryan Mills	Aye				

MOTION CARRIED

Appeal No. 4
Patrick and Nancy Higgins
Residential Single-Family

Applicant requests a variance of 465 sq. ft. to allow for a 630 sq. ft. attached garage addition resulting in a total of 1,105 sq. ft. located at 6440 Goodrich Road.

Town Code Reference;
§229-55 (D)
*1600 sq. ft. principal structure.
40% max allowable attached accessory structure
= 640 sq. ft.

DISCUSSION:

Patrick and Nancy Higgins were present to explain their request, adding that they purchased the house 23 years ago, and approximately 5 years ago they completely updated and transformed their home from the inside out.

There are two large silver maples in the backyard that are coming down regardless of the variance request, as they are decaying and falling apart and on to their property and garage.

There is currently a deck on the back of the house which is not structurally sound and needs to be replaced.

The plans for the proposed garage extend beyond simple garage use. They have other pieces of equipment and items that they would also like to store in the proposed structure, to keep everything protected and out of sight.

Mr. Higgins explained the plans and their thought process for reaching their desired goal.

The proposed garage will access from the current garage entrance, with a continuity through to the addition. A side entryway will be added, and you will not be able to see the proposed garage addition from the roadway.

Chairman Mills asked Mr. Higgins if the Christina Homeowner's Association own the land adjacent to Mr. Higgins, which Mr. Higgins confirmed. The only adjacent neighbor is at 6430 Goodrich Rd.

Mr. Higgins stressed that they designed the proposed garage to house their personal vehicles as well as their lawn equipment.

Mr. Higgins stated that they will landscape the proposed building similar to how the house is landscaped.

Mr. McNamara stated that it fits with the character of the neighborhood, it is not visible from any angle because it blends in with the house.

Mr. Krey asked about the property to the north, Mr. Higgins responded that the entire area was once wetlands before the development was built. It's currently a communal area, owned by the Homeowner's Association.

Mr. McNamara asked about the shed located on the back of the property, Mr. Higgins stated that it was once located where the new shed is, and it currently houses the tractor.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** Appeal No. 4 as written.

ON THE QUESTION:

The street view of the home will not change with the addition, the neighboring lot shields the structure reducing visibility of the structure. Also, the applicant has clearly defined why they are requesting this proposed addition.

Chairman Mills stated that this parcel is unique, due to the 'L' shaped vacant land around the property which is owned by the Homeowner's Association. Fairly dense foliage shields this property from most views of nearby neighbors as well as from Goodrich Road.

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

MOTION CARRIED

<u>Appeal No. 5</u>
Charles Weimer III
Residential Single-Family

Applicant requests a variance:
1. of 106 sq. ft. to allow for a 450 sq. ft. attached garage addition resulting in a total of 868 sq. ft.; and
2. of 8' to allow for a 37' front yard setback;

located at 8120 Red Clover Avenue.

Town Code Reference;
1. §229-55 (D)
2. §229-52 (A)

*1,905 sq. ft. principal structure.
40% max allowable attached accessory structure
= 762 sq. ft.

DISCUSSION:

Charles Weimer III was present to further explain his request, stating that because he currently has a classic car in his two-car garage, along with his regular car. His classic car needs to be in a controlled environment. His current garage is insulated, with drywall on the walls, and carpeting on the floor. It is a classic show car, and is not driven daily.

Mr. Weimer would like to build the additional garage in order to store his classic car in there, as well as purchase another classic car.

Mr. Weimer noted that the reason for wanting to bring it forward is to give him the ability to add more depth to the proposed garage. The proposed garage won't be any higher, and will have the same roofline as his existing garage.

The proposed garage will match the house, with the same paint colors, and keeping the current fencing that he has now.

Mr. Weimer stated that he has spoken with all of his neighbors, and nobody is opposed to his plans. He has submitted the necessary neighbor notifications as well.

Mr. Krey asked what kind of classic car Mr. Weimer has, Mr. Weimer explained his classic car and the history.

The board members all agreed that the project is well thought out, properly staked, and there were no additional questions.

ACTION:

Motion by Richard McNamara, seconded by Ryan Mills to **approve** Appeal No. 5 as written.

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

MOTION CARRIED

<u>Appeal No. 6</u>

Vincent P. Nanula
Residential Single-Family

Applicant requests a variance of 9' to allow a 16' rear yard setback for the construction of a single-family home located at 8997 Willyoungs Overlook.

Town Code Reference;
§229-52 *Map Cover rear yard setback of 25'

DISCUSSION:

Present and representing the applicant were Sean Hopkins on behalf of Essex Homes, Josh Schmidt, and Vinny Nanula also with Essex Homes.

Mr. Hopkins passed out three documents to the board which included an updated version of the plot land, a floor plan, and an aerial view showing the permanent open space behind the property.

Mr. Hopkins stated that Willyoungs Overlook is part of the Northwoods Subdivision. They are requesting a variance due to an encroachment in to the rear yard setback. The required rear yard setback in this

subdivision is 25 ft. They would encroach 9 ft. in to the setback with the sunroom / dining room portion of the proposed home.

Mr. Hopkins noted that the house itself is 3,090 sq. ft. with the encroachment for the dining room taking a total of 5.1% of the total square footage.

Mr. Hopkins pointed out that this lot is unique to many other lots within the Town of Clarence as there are not currently, nor will there ever be neighbors living behind this property, due to the deed restricted permanent open space property behind the property.

Neighbor notifications were provided to 8993 and 9001 Willyoungs Overlook.

Mr. Hopkins reviewed the 5 criteria which is set forth by town law when determining variance requests. Mr. Hopkins stated that they acknowledge that this hardship is self-created, adding that with the approximately 300 homes that Essex has built in the Town of Clarence over the past years, this is the first time they have needed to request a variance.

Mr. Hopkins reviewed the internal process that occurs within Essex homes, which resulted with a mistake being made, creating the need for the variance request.

Mr. Hopkins stated that when looking at the benefits to the applicant, and weighing it against any possible detriments to the neighborhood, he believes this plays in their favor. Benefits to the applicant include:

- The plans are fully developed, materials have been ordered, building permit application has been filed, and the homeowner has relocated.
- Hardship would occur to the homeowner because he would need to find another lot and another home which is currently a challenge within the Town of Clarence. Mr. Hopkins noted that this particular subdivision there are no other lots available through Essex Homes.

Mr. Hopkins continued to review the criteria and their responses for the variance request.

Mr. Hopkins noted that there are no environmental aspects that will be impacted by this request.

Mr. McNamara stated that the development has been underway for 20 years, and with all of the new additions and changes being made to the development, all of the work that went in to it in the beginning is being done over.

Mr. Hopkins stated that each variance request should stand on its own merits, and if this lot was adjoined to another parcel with a house or in close proximity to a house, he doesn’t feel they would have justification. The proposed dining room and backyard would be up against an open lot.

Mr. McNamara stated that he is concerned with setting a precedence for future homes located in the subdivision.

Mr. Hopkins noted that 12 ft. encroachments are allowed for balconies, porches, and covered porches.

Mr. Krey asked who owns the deed restricted open space directly behind this parcel that Mr. Hopkins has referred to. Mr. Hopkins responded that it is owned by the Homeowner’s Association.

Chairman Mills asked if there is a full foundation planned for the proposed sunroom. Mr. Nanula responded that there is a full foundation planned for the sunroom.

Chairman Mills asked Mr. Nanula to explain the sunroom. Mr. Nanula responded that there is a cathedral ceiling, three-sides of windows, a sliding patio door on one side, and vinyl siding consistent with the rest of the finishes of the home.

Chairman Mills asked Mr. Hopkins if they have had any contact with the neighbors at 8990 Greiner Road, Mr. Hopkins responded no. Chairman Mills stated that he understands it is not an adjacent property, but it is in close proximity.

Chairman Mills asked Mr. Hopkins about the size of the lot of open space located behind this proposed project. Mr. Hopkins stated that directly behind this property is 60 ft.
Chairman Mills asked if there are any plans for additional foliage or a buffer behind this proposed home on the lot. Mr. Schmidt responded that their plan is to landscape the backyard, which includes the planting of trees along the back of the property line. They planned to plant pine trees or evergreen trees which would provide year-round privacy.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine to **approve** Appeal No. 6 with the following condition:

1. Applicant plant pine trees or similar along the rear property line encompassing the sun room dimensions of a minimum of 17’ 6”.

ON THE QUESTION:

Chairman Mills stated that this particular variance request can be distinguished by the deed restricted, 60’ open space area behind the property. There is no neighbor directly impacted by this, but rather a Homeowner’s Association greenspace property.

Chairman Mills added that this request will be further mitigated by the homeowner’s agreement to add foliage as a buffer.

Raymond Skaine	Aye	Richard McNamara	Nay	Patrick Krey	Aye
Ryan Mills	Aye				

MOTION CARRIED

Appeal No. 7
Michael Thorpe
Residential Single-Family

Applicant requests a variance of 2' to allow a 6' fence to be located in the front yard setback located at 4760 Brentwood Drive.

Town Code Reference;
§101-3 (C) (2)
*A corner lot shall be considered to have two front yards from the public road right-of-way to the closest point of the principal structure.

DISCUSSION:

Mr. Thorpe was present to further explain his request, stating that he would like to have the height of his fence in the front yard at 6'. When they bought the home, they were under the impression that they were connected to sewer, and being unfamiliar with the area, did not know that it is septic. They initiated a plan to build a 6' fence, then realized they were in the septic field, so they needed to go around it.

Mr. Thorpe stated that their main reason for the fence is a safety reason, especially now due to there no longer being a cul-de-sac at the end, the traffic has increased as well as the speed of the traffic.
They have small children, and want to keep them secure from the surroundings, this is the most efficient way to accomplish this.

Mr. Thorpe stated that there is a house down the street that has a variance for their fence also in their front yard, so this will keep it in line and in character with the rest of the neighborhood.

Mr. Krey asked what kind of fence Mr. Thorpe plans to put up, Mr. Thorpe responded a wood fence.

Mr. McNamara asked whether a stockade fence itself would be enough, Mr. Thorpe responded that he doesn't feel it would be sufficient to keep his children secure.

Mr. Skaine asked if the variance is only needed for the Brentwood side of the property. Mr. Thorpe responded that the Helenwood side of the property needs the variance, because the Brentwood side is all within code.

Mr. Skaine asked what the length of the fence will be, Mr. Thorpe explained that it will go around the leech field from the back of the house.

Chairman Mills asked Mr. Thorpe if he has considered fencing another portion of the property, Mr. Thorpe responded that the septic field takes up a majority of that area, and behind the field is a septic tank, and would leave them with no yard.

Mr. Thorpe explained that they also have two large dogs, both able to jump fences.

Chairman Mills asked Mr. Thorpe how long they have owned this home, Mr. Thorpe responded almost three years.

In regards to Public Participation, no one spoke.

Chairman Mills asked Mr. Thorpe if he has spoken with any of his neighbors. Mr. Thorpe responded that the neighbor on the Brentwood is excited, because he has wanted to put up a fence for as long as he has lived there, and this will help cover one side of his property. Mr. Thorpe added that the neighbor on the other side is also happy to have her privacy back. When the house was vacant for many years, the foliage and maintenance became overgrown. Mr. Thorpe has cleaned it all up, which has fully exposed her property. She is now happy to have privacy once again in the form of a fence.

Mr. McNamara asked if this was approved, Mr. Thorpe would be willing to preen the Helenwood side of his property. Mr. Thorpe responded that the long-term goal is to do landscaping and plant foliage along that side, once he can determine what will be deer proof.

Chairman Mills asked Mr. Thorpe how far it is from the road to where his proposed fence would be. Mr. Thorpe responded 17 ft. from the fence line to Helenwood Dr.

Mr. McNamara asked where the proposed fence is from their property line. Mr. Thorpe responded 7 inches from the neighbor's existing fence.

Mr. Bleuer stated that per the submitted drawings, the fence would be 17 ft. from the edge of the right-of-way.
Mr. Bleuer stated that a fence cannot be installed within a public right of way.

Discussion continued regarding the edge of the property line and the right-of-way. Mr. Bengart explained that part of what you own when you own property, is a right-of-way, and you cannot build a fence in a public right of way.

Discussion continued.

Chairman Mills stated that the board has some concerns, including the large span of wood for the neighbors, and how it fits in with the aesthetics and character of the neighborhood. There is a pretty large span of wood that can be mitigated with some landscaping. A plan for some type of foliage or shrubbery would be beneficial for Mr. Thorpe's request.

Additionally, there is concern with the location of the proposed fence, and knowing where the fence will be in relation to the Right of Way.

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine to table Appeal No. 7.

ON THE QUESTION:

Mr. Bengart stated that tabling this request does not mean that it will be approved when it comes back.

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

MOTION CARRIED

Appeal No. 8
Bernard Zephro
Agricultural-Rural Residential

Applicant requests a variance to allow a detached accessory structure (garage) to be located within the front yard setback located at 10630 County Road.

Town Code Reference;
§229-44 (E)

DISCUSSION:

Mr. Zephro was present and further explained his request, stating that he wants to build the garage to store his motor home.

Mr. Zephro stated that due to the wet condition of the property as well as needing to put in additional driveway, this was the most feasible option.

Mr. McNamara asked about the pine trees currently on the property, Mr. Zephro responded that the proposed garage would fit in between the two pine trees, but he is unsure as to whether he will keep them.

The proposed garage will look identical to his house, in terms of colors and materials as well as landscaping.

Mr. Zephro stated that the neighbor to his east does not have any issues.

Mr. McNamara asked Mr. Zephro if he plans to run electric and heat to the structure. Mr. Zephro responded no heat, and he has not decided on the electric yet.

Chairman Mills asked Mr. Zephro if he has a contractor yet, Mr. Zephro responded that there was someone recommended to him. They are still working on proposals.

Chairman Mills asked Mr. Zephro what the total size of his parcel is. Mr. Zephro stated that it is 230’ x 350’.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Richard McNamara, seconded by Ryan Mills to approve Appeal No. 8 with the following conditions:

1. South and east sides plantings and landscaping beds.
2. No business to be run out of the structure.
3. Materials are to match the house.

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

Appeal No. 9
David and Gayle Brace
Traditional Neighborhood District

Town Code Reference;
1. §229-66
2. §229-66

Applicant requests a variance:
1. of 144 sq. ft. to allow an 864 sq. ft. (24'x36') detached accessory structure (garage); and
2. of 2 ft. to allow a 3 ft. side yard setback for a detached accessory structure (garage);

located at 6129 Goodrich Road.

DISCUSSION:

Gayle and David Brace were present to further explain their request, stating that they currently have an "L" shaped garage on the property. One of the corners, which isn't part of the garage, has a Maple Tree and it cracked the concrete pad of the garage floor. The condition of the current garage is poor.

With removing the current garage, they would like to replace it with a new one in the shape of a rectangle, which requires a small variance.

Mrs. Brace stated that they would like to push the garage closer to the south property line, because the way the garage sits in relation to the driveway, they need to veer a bit to the left in order to get both cars in to the garage. Shifting the garage closer to the property line would make it easier to fit both cars in. Mr. McNamara asked if the size of the garage has changed, Mrs. Brace responded that the proposed garage is two feet shorter in depth, and two feet wider in the front. It will be moved back slightly, but will not encroach on the rear setback, only the side.

Mr. McNamara noted that the Maple tree will be removed as well saplings behind the garage. Mr. McNamara asked if the concrete will have a barn or pole barn on it, Mrs. Brace responded it will be a pole barn with metal siding. The grey will be a shade darker to match the house, with white windows and doors. The sidewalls will be 10 ft. high.

Mr. McNamara asked if it will be used for personal use only, no business. Mrs. Brace said no, only for personal. It's a two-car garage, they have a camper and once the cars are inside, it will give them just enough room for a snowblower and lawnmower.

Chairman Mills asked if there will a new roof, which Mr. Brace responded yes. Chairman Mills then asked what size doors they will be, Mr. Brace stated 16 ft. insulated.

In regards to Public Participation, Mr. Bleuer stated that there was a neighbor that was at the meeting, but had to leave. Kelsey Merkle of 6122 Railroad Street left a letter stating she does support the proposed garage, but also wanted to note her concerns:

- She is sad to lose such a nice tree, but understands that it must come down.
- She offers her neighbors access to her property, if necessary, to remove the tree.
- She does not have any objection to the 5 ft. setback but requests that weed control be taken in to consideration when finishing the back of the proposed garage, as maintenance of that area will be difficult.
- Mrs. Merkle also stated that she is concerned about runoff in to her yard, as it is very wet. She wouldn't want the elevation of the garage raised to exacerbate that issue, and requests that the roofline of the proposed east to west as it currently does, to minimize runoff on to her property.

The letter is signed by Kelsey Merkle, Wendy Merkle, and Larry Merkle.

ACTION:

Motion by Raymond Skaine, seconded by Richard McNamara to **approve** Appeal No. 9 with the following conditions:

1. weed control behind the garage
2. roofline on the garage to run east/west

ON THE QUESTION:

The applicant heard, understands, and agrees to the conditions as stated.

Mr. Krey stated that since the proposed garage will be replacing an existing garage, it will not create any change in the character of the neighborhood, and if anything, will be an improvement to the aesthetics of the area.

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

MOTION CARRIED

Appeal No. 10
Vitaliy Aponchuk
Residential Single-Family

Town Code Reference;
§229-52

Applicant requests a variance to allow a 380' front yard setback for the construction of a single-family home located at 5925 Thompson Road (Lot 1).

DISCUSSION:

Vitaliy Aponchuk, applicant and resident of 5925 Thompson Road as well as realtor Joseph David were present to further explain the request.

Mr. Aponchuk explained that he and his family want to stay together, so they have three parcels together. When they designed the house and the layout, they paid special attention the neighborhood, to keep the same characteristics and look as the existing homes.

Mr. David stated that originally when Mr. Aponchuk approached him about this, they considered an Open Development Area, then realized that the cost would be well over their budget. In order to keep the family close by they split the lot in to three parcels. One of the lots has the existing house, which will remain. The proposed house will be located on an 8-acre lot, which is what they are requesting the variance for, and then there is a smaller lot to the south of the existing house.

Mr. David stated that in order to set the house back, they have attempted to keep in compliance with the Town in regards to hydrants, side yard setbacks, etc. Mr. David stated that is why the odd lot shape is angled on the survey.

Mr. Krey asked if Mr. Aponchuk also owns Lot 2, Mr. David responded yes, Lots 2 and 3 also. Mr. Krey reviewed the plans for the lots and building homes on them with Mr. David.

Mr. Krey asked why the home needs to be so far back, Mr. David responded that it is an approximately 3,500 sq. ft. 2-story home, and is fairly wide.

Mr. David stated that there are only two homes to the south of this parcel, both are set further back, as well as one home to the north.

Mr. Krey asked why the proposed home can't be in line with the existing house on lot 2. Mr. Aponchuk responded that it is due to the width of the house, and it would sit too close to the property line on the north side.

Mr. Krey asked Mr. Aponchuk if he didn't have a side-load garage, would he be able to move the house closer to the street. Mr. Aponchuk responded that they want to have the house seen from the street, not the garage. The house is a life-long dream, they want the focus to be on the home.

Mr. Skaine asked about the sizes of the three lots, and the difference in setback between the two lots. Mr. Bleuer stated that the house on lot 2 is approximately 164' back. Mr. Bleuer clarified that the +/- 360 that Mr. Skaine is referring to, is the depth of the lot.

Mr. Skaine stated that his concern is that placing the house that far back, he will be looking right in to the backyard of the home on lot 2.

Mr. Aponchuk explained the landscaping that he plans to put in, which will help to mitigate the view from the house on Lot 2. He added that he is currently living in the house on lot 2. When the proposed home is finished, he will move in to there, his brother-in-law will move in to the house currently on lot 2, and his mother-in-law will be on the other lot. The house, proposed for the third lot will be withing the Town's regulations.

Mr. Bleuer explained that determining the setback is complex. If taking the average of the existing principal structures, the average setback is approximately 250 ft. Included in the variance packet is an old setback approval granted in 1998 which was coordinated agreement between the residents along the corridor, agreeing to a maximum 300 ft. front yard setback for all of the existing lots in that area.

Mr. Bleuer stated that the average setback is 250 ft., and the existing agreement is for 300 ft. maximum.

Mr. Bleuer noted that the survey that was submitted by the applicant of 380 ft. and was measured from the center line, rather than from right-of-way. Measuring from the Right of Way would reduce the actual setback request to 347 ft.

Mr. Skaine asked what is to the north on this lot, Mr. Bleuer responded that it is an accessory structure. Bruce Bonhoff owns 5420 Thompson Road; he wasn't able to attend the meeting and also owns the

property at 5955 Thompson Rd. His property has a permitted 300 ft. setback and does not have objections to the requested setback as long as:

1. He has a couple of requests as well. He would like his own increased setback for future principal dwelling unit on the vacant lot.
2. Does not want the architectural drawings submitted by the applicant to materially change in terms of appearance, square footage, location, driveway, all of the details.

Mr. McNamara asked if this property has been split yet. Mr. Aponchuk responded it has already been approved.

Mr. McNamara stated that on lot 3, the 50 ft. sliver goes all the way back, and asked if that is the reason for the originally desire for an Open Development. Mr. Aponchuk responded that he was following the minimum square footage for the lot.

Mr. McNamara asked what the minimum square footage is for a lot. Mr. Bleuer responded 1 acre. Mr. McNamara asked why they didn't request to place the house back farther to give the house on lot 2 more of a buffer. Mr. David stated that they did consider that, but because they'd need to put in a hydrant based on the fire code, would exponentially raise their costs. They chose to stay within the fire hydrant range.

Mr. McNamara asked if Mr. Aponchuk would agree to not sub-divide any more in the future. Mr. Aponchuk stated that it has already been approved, and that there is no reason for them to apply for that in the future.

Discussion continued regarding the location of the fire hydrant.

Chairman Mills referred to the architectural drawings, and asked if the home they are building will be similar to the plans that were submitted. Mr. Aponchuk responded that it is actually what they are planning to build.

Chairman Mills asked who the builder will be. Mr. Aponchuk responded that he will do a majority of it, and will also hire contractors for different parts of the home.

Mr. Bleuer asked Mr. Aponchuk for clarification on the setback, whether it is from the center line or is his intent 380 ft. from the property line. Mr. Aponchuk responded that it is 393 ft. from the fire hydrant.

Mr. David stated that the drawing reflects the setback from the center of the street.

Mr. Bleuer conferred with Mr. Bengart.

Mr. Bleuer stated that in this case, the average allowable setback would be 250 ft.

Chairman Mills stated that it is a 130 ft. variance to allow for a 380 ft. front yard setback.

ACTION:

Motion by Patrick Krey, seconded by Raymond Skaine to allow a 130 ft. variance to allow for a 380 ft. front yard setback with the following condition;

1. Applicant not divide the property any further.

ON THE QUESTION:

Mr. Bleuer stated that the average setback has been determined by existing principal structures within 500' of the proposal. To the south of the proposed home there are setbacks of 164 ft., and to the north there is one principal structure of 250 ft., and two homes with 300 ft. setbacks, therefore the average rounded out is 200 ft.

Chairman Mills added that this variance request is unique due to the large size of the parcel, and based upon how the adjacent homes are situated and the size of the parcel. This is how it is distinguished from any present or future variance requests.

Mr. Krey added as the applicant pointed out, the placement of the home will align with the two properties to the south 5905 and 5875 Goodrich Road. It will not create an undesirable change in the neighborhood.

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

MOTION CARRIED

Meeting **adjourned** at 8:38 p.m. with a motion by Raymond Skaine.

MOTION CARRIED

Amy Major
Senior Clerk Typist