

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
August 9, 2022

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

Zoning Board of Appeals members present:

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

Town Officials present:

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

Other Parties present:

Peter Montana	Michael Badding	Paul Evans	Ryan Evans
Eugene Hrynczak			

Request by Patrick Krey to amend the minutes of the meeting held on July 12, 2022 with the following:

- Mr. Krey was recused from Appeal No. 3 under Old Business and should not have been shown as voting on that item. This will be amended in the minutes.

Motion by Raymond Skaine, seconded by Gerald Drinkard to **approve** the minutes of the meeting held on July 12, 2022

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

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Michael Badding
Agricultural - Floodzone

Town Code Reference;
§229-34 (D)

Applicant requests a variance to allow an accessory structure (Agricultural Support Structure) to be constructed on a lot that currently does not contain a principal structure located at 8030 Westphalinger Road.

Mr. Drinkard recused himself from Appeal No. 1.

DISCUSSION:

Michael Badding was present to discuss his request and answer any questions, stating that he is the owner of Badding Bros Farm Market and Garden Center. Mr. Badding added that although the market is located on the East Amherst side of Transit Road, a large number of his customers are located in Clarence.

He would like to build a small barn for equipment storage on his farm land property located at 8030 Westphalinger Road. At this time there are no plans to build a residence at this property.

For many years he and his family have grown and retailed fresh fruits and vegetables on this property, but due to the changing market, they now also grow and retail fresh produce, but also grow and retail flowering plants, vegetable start-up plants, and other garden related products, as well as seasonal produce.

Mr. Badding stated that they continue to use the land for various agricultural purposes, either renting portions out to other farmers, or growing vegetables themselves for sale in their market. They have a difficult time growing and maintaining their fields, because all of their equipment is stored at their market in Amherst, and has to be driven to the farm property.

Mr. Badding noted that their hope is that this barn will eliminate their need to drive the equipment back and forth to the farm each time they need to use it.

As stated in his original request, there will not be any chemicals or fertilizers stored in the barn, and it will not be used to house any animals.

Mr. Badding does not feel there will be any adverse effects to the neighboring properties, or the character of the community. There are other barns and open farm land on various parcels along Westphalinger, and he has spoken with neighbors on both sides of the property as well as across the street, and none of them object to the proposed structure.

Mr. Badding added that their business is an agricultural and horticultural business, and they appreciate that Clarence is a Right to Farm Community.

Mr. Skaine asked if there will be any electric or water connected to the proposed structure. Mr. Badding responded no, there will not.

Mr. Skaine confirmed that there will not be any chemicals or fertilizer stored in the structure. Mr. Badding responded no, equipment only.

Mr. Skaine stated that when he went to do a site visit, he did not see the stakes showing exactly where the structure will be. Mr. Badding noted that the stakes are out there, but may be hidden by the weeds that need to be cut.

Mr. Badding described for Mr. Skaine that the center of the door will be just to the south of the Poplar Tree.

Mr. Krey asked Mr. Badding to clarify if the property shown on Westphalinger Road is the only area that they farm on. Mr. Badding responded yes, and that they do have various smaller areas behind their farm market on Transit Road but are limited as to what they can grow there. This location on Westphalinger is currently their only farmable property.

Mr. Krey stated he agrees that needing to drive the farm equipment to Westphalinger in order to farm is not ideal.

Mr. Krey asked Mr. Bengart if making it a condition of approval stating that no chemicals, fertilizers, or animals are to be stored in the proposed barn would be possible. Mr. Bengart advised against including animals, and if the applicant is willing to agree to any conditions, that is fine.

Mr. Krey confirmed with Mr. Bleuer in terms of the pole barn that Mr. Badding is requesting to erect, that the variance is strictly because there is no primary structure on the property. The request is not under any architectural review with the Zoning Board.

Mr. Bleuer added that this would be an agricultural support structure, not a principal agricultural use. Mr. Bleuer noted that as the Town Attorney has stated in regards to potential conditions, this is the agricultural zone, the raising of livestock is an allowable use.

Mr. McNamara asked how many acres of land there is. Mr. Badding responded that the portion of the parcel they own is just under 17 acres.

Mr. Badding stated that the proposed building will be approximately 100 ft. from the road, approximately 40' x 60' and 14' high.

Chairman Mills asked what color and materials the proposed structure will be. Mr. Badding responded that it will be metal, farm red in color, with a metal roof.

Chairman Mills asked what the plans are down the road for the parcel. Mr. Badding responded that they are unsure at this time.

Neighbor Notifications are on file, no comments have been received.

Mr. Bleuer noted that the applicant is aware if a variance is granted, a Floodplain Development Permit would be required through the Town of Clarence Engineering Department. The applicant confirmed that he understands.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Richard McNamara, seconded by Patrick Krey to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Krey stated that Westphalinger Road has a very rural character to it, it looks like an agricultural area. This proposed barn will not create an undesirable change or be a detriment to the neighborhood.

As the applicant stated, there are no other alternatives, and needing to transport the equipment back and forth between the market and the farm property creates a hardship for both his family and the business.

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

MOTION CARRIED

Appeal No. 2

Peter Montana
Residential Single-Family

Town Code Reference;
§229-52(4) (b)

Applicant requests a variance of 3'7" to allow an 8'11" side yard setback for the construction of an attached accessory structure (garage) located at 6381 Bridlewood Drive South.

Mr. Drinkard returned to the dais.

DISCUSSION:

Peter Montana was present to discuss his request, and respond to any questions. Mr. Montana stated that he would like to add a 12'x20' additional bay to his existing garage.

Mr. McNamara noted that the proposed structure fits the character of the house, with the same stone and siding, and will look as if it has always been there.

Mr. McNamara asked Mr. Montana if he plans to use the same roof shingles. Mr. Montana responded yes, that everything is going to match the house.

Mrs. Burkard agreed, noting that there is a similar garage directly across the street from Mr. Montana's house.

Mrs. Burkard asked Mr. Montana if he will be conducting any business out of the proposed garage. Mr. Montana responded that it is just for storage.

Mr. Krey asked about the shed that is currently on the property, and asked if a variance was needed for it. Mr. Montana responded no; it is a temporary shed.

Mr. Drinkard noted that there are quite a few three-car garages along Mr. Montana's street, and will add to the aesthetics of his home.

Chairman Mills asked Mr. Montana if he plans to match the Shake Siding as well. Mr. Montana responded yes; everything will match the house.

Chairman Mills asked Mr. Montana if he would agree if pending board approval, a condition was placed stating no business is to be conducted from the garage. Mr. Montana responded yes.

Chairman Mills also asked Mr. Montana if he would agree to a condition stating the shed is to be removed. Mr. Montana responded yes.

Neighbor notifications are on file. No comments have been received.

ACTION:

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** Appeal No. 2 as written, with the following conditions:

1. Garage is not to be used for business purposes
2. Siding is to match the house.
3. Front Shaker siding is to match the house.
4. Shed is to be removed from the property.

ON THE QUESTION:

The applicant has heard, understands, and agrees to the conditions.

Chairman Mills stated that throughout Mr. Montana’s neighborhood there is a large number of three-car garages, this request will not negatively affect the character of the neighborhood.

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

MOTION CARRIED

Appeal No. 3

Paul and Holly Evans
Agricultural Rural Residential

Applicant requests a variance to allow a 135’ front yard setback for the construction of a single-family home located at 10685 Stage Road.

Town Code Reference;
§229-41 (A)
*Established front yard setback of 45’

DISCUSSION:

Paul Evans was present to explain his request, stating that he and his son purchased the 5 acres of land near the quarry with the intentions of building their single-family homes near each other on the property.

Mr. Evans stated that based on the location of the property and the steepness of the quarry, the current setback would not allow for the construction of the homes under the zoning requirements. They would like to put their house down in to the quarry, which would require them to increase the setback to approximately 135’-150’.

Before purchasing the property, they checked out the neighboring properties, and the current neighbors would not be able to see their homes with their locations in the quarry.

Mr. Evans noted that in order to make sure they would be able to build on the property, they had all of the necessary testing done.

Mr. Skaine asked how they will accommodate the steepness of the driveway and access to the house. Mr. Evans responded that his previous home had an even steeper slope than this property. He will have a site contractor come in to assure that the slope and the width of the driveway will accommodate the plans that they have.

Mr. Skaine asked if the Erie County Health Department has approved the septic system. Ryan Evans responded that the approval for the septic is currently in process, they do not expect any issues.

Mr. Skaine asked how they measured to go back 135'. Mr. Evans responded that they went to the Erie County Mapping program.

Mr. Drinkard asked about the property, regarding the one lot with two houses and how that has been done.

Mr. Evans responded that the property was purchased as one lot then deeded to two separate parcels, and have applied for a Lot Line Adjustment and that was approved.

Mr. Bleuer noted that the overall parcel received Minor Subdivision approval in 2017 and was recorded as two lots. Subsequently as the applicant stated, a Lot Line Adjustment was approved in July, 2022 to modify the lot lines between the parcels.

Mr. Bleuer stated that both lots have the ability if approved, to have their own curb cut.

Mr. Drinkard noted that there is history with the quarry, and the parcels that Mr. Evans owns are flat. Mr. Drinkard asked Mr. Evans if they have surveyed the rocky area and the gully that runs back there enough to understand what they are asking for. Mr. Evans responded that they have been there between 30-40 times already, and they love it down there. It is peaceful and quiet, and they enjoy the area.

Mr. Drinkard noted that in 2008 when the original work was done for the subdivision, there was discussion regarding the complexity of the terrain that there may need to be different setbacks if the time came that anyone was interested in building down there.

Mr. Krey stated that he does not see what else can be done with this parcel other than what the applicant is requesting.

Mr. Krey asked if there will be any problems with drainage. Mr. Evans responded no, that because it's a quarry for sand, gravel, and rock, it drains very well. They were at the location during early spring to make sure there was no standing water or flooding, and there was very minimal water. No issues with drainage.

Mr. McNamara stated that it is a nice piece of property, it was staked off very well.

Mrs. Burkard asked what size homes they plan to build. Mr. Evans responded that his will be approximately 2,500 sq. ft. and his son's will be between 2,800 sq. ft. – 2,900 sq. ft.

Mrs. Burkard asked what is located behind where they plan to build their homes. Mr. Evans responded that more quarry is back there, and it is very beautiful.

Chairman Mills asked Mr. Evans if he has closed on the parcels yet. Mr. Evans responded that he owns one parcel, his son owns the other.

Chairman Mills asked Mr. Evans what his plans are if the variance is not granted. Mr. Evans responded that they have no other options, he would simply own a nice piece of land.

Chairman Mills asked if the homes will be ranch or two-story, Mr. Evans responded that they will both be two-story dwellings.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** Appeal No. 3 as written.

ON THE QUESTION:

Mr. Krey noted that the applicant clearly explained that there are no other options for the property. Typically, with setback variances you look at the street, and the character of the neighborhood. In this regard, as the applicant stated, the home will most likely not be visible from the road.

Mr. Krey stated that he is approving this based on the unique characteristics of the lots, it won't create any undesirable changes in the neighborhood, and the homes that will be built there will look very nice.

Chairman Mills noted that due to the uniqueness of the site, it sets it apart from other setback requests that they have seen.

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

MOTION CARRIED

Appeal No. 4

Ryan and Elizabeth Evans
Agricultural Rural Residential

Applicant requests a variance to allow a 335' front yard setback for the construction of a single-family home located at 10695 Stage Road.

Town Code Reference;
§229-41 (A)
*Established front yard setback of 45'

DISCUSSION:

Ryan Evans was present to explain his request, stating that he would like to build a single-family home 335’ back from Stage Road, next door to the applicants for Appeal No. 3.

Mr. Evans added that the reason for the variance is due to the topography of the land does not allow for homes to be build 45 ft. off from the road. There is a driveway currently located on the property that they plan to build their home at the end of.

Mr. Drinkard stated that he has no questions, they were all answered in the previous request, Appeal No. 3.

Mr. Skaine stated that it is a nice location for both homes, and asked if there will be access from one home to the next without having to go on to Stage Road each time. Mr. Evans responded that there are not a lot of trees right around where they plan to build their homes, so the properties are easily accessible to each other.

Chairman Mills asked what size home they will have, Mr. Evans responded that it will be a two-story home, 2,866 sq. ft.

Neighbor Notifications are on file, no comments were received.

Mr. Bleuer stated that by reducing their rear yard setback, they will be closer to potential impacts of future development of any allowable uses, if there ever is any back behind them.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Patrick Krey, seconded by Ryan Mills to **approve** Appeal No. 4 as written.

ON THE QUESTION:

Mr. Krey stated that the unique nature of the lot is why he’s voting to approve this request, there is no alternative choice, and it will not have an undesirable effect on the neighborhood.

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

MOTION CARRIED

Appeal No. 5

Eugene Hrynczak
Residential Single-Family

Town Code Reference;

1. §229-55 (H)
2. §229-55 (H)

Applicant requests a variance:

- 1) to allow a secondary detached garage; and
 - 2) of 520 sq. ft. to allow a 720 sq. ft. secondary detached garage;
- located at 5005 Hillcrest Drive.

DISCUSSION:

Eugene Hrynczak was present and explained his request, stating his desire to build the detached garage to store his classic cars and motorcycles in. He has worked with different builders to find the best aesthetics that will fit in well with the neighborhood.

Mr. Hrynczak explained the other options that he considered, noting that this was the most feasible option. He looked in to attaching the proposed garage to the house, but because the house is higher than the backyard, that was not possible. His plan is for a 20 x 36 sq. ft. garage with 8' walls, and will be positioned for easy driveway access.

Mr. Hrynczak stated that this is the best option because the contents will all be on their property, it will be aesthetically pleasing, it will match the house and should blend in to the background.

Mrs. Burkard asked if the roof will be metal, Mr. Hrynczak responded yes, the roof will be brown with beige siding.

Mrs. Burkard asked Mr. Hrynczak if he plans to do landscaping around the proposed garage. Mr. Hrynczak responded yes, once the structure is completed. He is re-designing the landscaping, it will all be done together.

Mrs. Burkard asked if the proposed structure can be any smaller. Mr. Hrynczak responded no, he has already reduced the size and this is the smallest he can go to utilize the space as he has planned.

Mr. McNamara noted that the location for the proposed garage is set down a hill a bit, and will not be too noticeable from the road. He asked Mr. Hrynczak if he plans to put in a stone driveway. Mr. Hrynczak responded that there will be a stone driveway off of the main driveway. The fence will be redone as well.

Mr. McNamara asked if electric will be run to the garage, Mr. Hrynczak responded yes, but there will not be heat and he does not plan to run a business out of the structure.

Mr. Krey asked if there are any other structures in the neighborhood similar to this proposed garage. Mr. Hrynczak stated yes, there is a large garage next to the home on Elmcroft Dr. An email with a photograph of 5100 Elmcroft was entered in to the record as Exhibit A.

Chairman Mills asked if attaching a garage to the house was an option that Mr. Hrynczak had explored. Mr. Hrynczak responded that it was his original plan, but after looking in to it, it was not an option because the house sits up higher than the backyard. Aesthetically it would be very unpleasing, and cost an extensive amount more.

Mr. Hrynczak noted that he looked in to renting storage units, but there are not any available that are large enough for what he needs, and most are for commercial use.

Mr. Hrynczak confirmed that the materials will match to the best of their ability with colors to the house. The landscaping will all be upgraded around the structure, it won't hide the structure, but it will look nice.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Richard McNamara, seconded by Raymond Skaine to **approve** Appeal No. 5 as written, with the following condition:

- 1. No business to be conducted from the building.

ON THE QUESTION:

Mr. Hrynczak heard, understands, and agrees to the condition.

Mr. Drinkard asked the applicant if he plans to rent the garage out, Mr. Hrynczak responded no, it is intended for his own personal vehicles.

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

MOTION CARRIED

Appeal No. 6

Frank Dec (Davmicor, INC.)
Residential Single-Family

Town Code Reference;

- 1. & 2. §229-55 (J)
- 3. §229-55 (D)
- 4. Relief from May 16, 2018 Town Condition of Approval.

Applicant requests a variance:

- 1 & 2) to allow two accessory structures to be constructed on a lot that currently does not contain a principal structure; and
- 3) to allow a detached accessory structure to be located within the front yard setback; and
- 4) to allow an additional permanent access to Shimerville Road; located at 5695 Shimerville Road.

Mr. Bleuer stated that Appeal No. 6 has been withdrawn by written request submitted by the applicant.

Mr. Bleuer added that a letter of opposition was submitted by a neighbor, and is on file. If this request was ever presented to the Board in the future, the letter would be provided as comment.

Motion by Raymond Skaine to **close** the meeting at 6:18 p.m.

Motion carried.

Amy Major
Senior Clerk Typist