

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday September 11, 2012  
7:00 p.m.

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

Zoning Board of Appeals members present:

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

Town Officials present:

Director of Community Development James Callahan  
Deputy Town Attorney Steven Bengart  
Councilman Bernard Kolber

Other interested parties present:

Paul Fadale	Cesare Banach
Lorna Heim	Ken Thompson
Joseph Mattina	Justin Zahn
Dale Cowan	Bill Fedor
Fran Randall	Mark Nagel
Gerald Shaffer	Lindy Ruff

**Old Business**

**Appeal No. 6**

Cesare Banach  
Residential Single Family  
(Property has previously received a Commercial  
Use Variance)

Requests the Board of Appeals approve and grant:  
1.) a 65.5 square foot variance to allow a plaza  
sign 97.5 square feet in size.  
2.) a 26 square foot variance to allow an LED  
display sign board 36 square feet in size.  
Both variances apply to the request to allow for the  
construction of a new combination tenant panel and  
LED display board plaza sign at 8500 Roll Road.

Appeal No. 6 is in variance to §181-3(B)(1) and § 181-3(B)(4).

**DISCUSSION:**

Cesare Banach is present along with Paul Fadale of NAS Sign Company. Chairman Henning noted that the Board was concerned with the dimensions of the sign at the previous meeting.

Mr. Fadale said the applicant still wants to go with the original proposal which is an 88.5 square foot sign with an upper cabin of 3.5' x 15' to show 15 tenant spaces at 3 square feet per tenant. There was some

confusion because Mr. Banach drew and submitted a sign proposal that showed the sign higher than what is allowed for a monument sign; it was also higher than what was submitted in the original proposal. Mr. Fadale said he is officially re-submitting the original proposal at this meeting. The LED cabinet will be 3' x 12' showing only on-site messaging. The sign will be shut down at a proper time so it does not interfere with traffic or late night tenants/residents in the area. The sign will be dimmed down at 6pm to 25%-30%. There are 17 tenants but the applicant is asking for 15 spaces on the sign.

Mrs. Burkard asked how the view from the future patio homes across the street on Roll Road will be affected by this sign. Mr. Banach said he spoke with Jim from Milherst who indicated the existing pine berm will be continuous around the whole corner of that property. So the residents will see the berm and the pine trees, and the sign won't be an issue. He is trying to give each tenant an equal share of the sign.

Mr. Fadale said the LED messages will be stable on-site business messages, no moving or flipping. It will meet the requirements of the Town Law. Mrs. Burkard asked why the LED can't be the size the law allows (which is 10 square feet) if it is going to be a simple message. Mr. Banach said the LED across the street is bigger than 10 square feet; it is about 24 square feet. Mr. Fadale said if the sign is smaller in height it will restrict the pictures and images displayed.

Mr. D'Amato is concerned with the view of the neighbors across the street as well. Mr. Fadale said the sign could be moved closer to Harris Hill Road. Mr. Banach agreed and said the only variable they need to consider is the oil pipeline that runs through the property.

Mr. Mills asked if the building is at full occupancy. Mr. Banach said no. Some tenants will need larger space so he agreed that 17 signs would not be needed. Mr. Mills is concerned with the size of the sign particularly the LED and noted that this building is in more a residential area. Mr. Fadale asked if bringing the length of the sign down to 13', with the columns, would be acceptable. He suggested the florescent sections be 3.6' x 10' and the LED section reduced to a 3' x 10' with columns, header top and landscaping around the sign. Mr. Mills thinks with a smaller LED sign, the message will still readable by the cars passing by. Mr. Fadale said he get down to a 3' x 8' LED, the upper section of the sign will be 3' x 12'; this is the size of the ad copy. He said the size of the LED with the cabinet would be 40" high by 100" wide. Mr. Fadale said he will have drawings of the new plan to everyone's e-mail tomorrow. Mr. Mills would still like to see a lesser sized LED. The proposed LED sign is full color.

Mr. Michnik asked if the applicant considered one sign out front with the name of the plaza on it and then directional signs that indicate the names of the businesses that occupy the building could be placed on the property once you drive around the building. Mr. Banach said that is not the look he is going for. Mr. Michnik voiced his concern with the placement of the stakes. He said it is a huge sign. Mr. Banach said a one tenant building gets the same size sign as a multi-tenant building. Mr. Michnik agreed with Mr. Mills' concern regarding the size of the LED sign. He said people worked long and hard on developing the Sign Law and now the applicant is asking to go against that law.

Jim Callahan clarified that the size of a sign in the commercial zone is a maximum of 32 square feet; the maximum for a plaza sign is 48 square feet with one-third changeable.

Sally Banach said Mr. Michnik's suggestion of one sign out front and numerous others placed on the property indicating the names of the businesses within the building would not work because the clients are complaining that no one knows they are there because there is not sign out front.

John Fletcher of Fast Signs wondered if the Board considers safety when reviewing the size of a sign. It is very helpful if the driver of a vehicle can see the sign when he is still a couple of blocks away from the building so he can change lanes or put his directional on. He said the LED signs are the way of the future and maybe the Town should consider updating their Sign Law. Mr. Callahan noted that the Sign Law is new, amended and adopted in 2009.

Mr. D'Amato does not think having a smaller or larger sign is a safety issue. The Board does not want the Town to look like Las Vegas; a lot of time and effort went into creating the Sign Law and the Board needs to balance and judge their decisions. The standard painted signs work just as well in advertising a business and as far as a safety issue, it's just common sense. Mr. Banach said he does not want a Las Vegas type sign.

Mr. Fadale said it is discriminative of the lighting source if the sign's brightness is the same as every other sign in the Town. The brightness is adjustable on LED signs. He said the State law is that the message can change every six (6) seconds.

Mrs. Burkard asked if there is any research showing that LED signs increase business for its owner. Mr. Fadale said the National Sign Association and the DOT has numerous findings. Mr. Callahan said the Town did a lot of research in adopting the current Sign Law; it does take everything into consideration along with the character of this community. The Town of Clarence is better than the State average; one requirement is to hold for 30 seconds, no flashing, and no popping. The Town wants a classy sign. Mr. Fadale said Mr. Banach's sign will be a gorgeous icon. Mr. D'Amato said the same thing could be done within the Sign Law.

#### **ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **deny** Appeal No. 6 under Old Business on the basis of the following review of the five (5) criteria the Board is asked to look at with each request:

- based upon the evidence in the record and given the location of the subject property it would be a detriment to the character of the area and nearby property due to its size.
- the evidence demonstrates that the applicant can build a sign within what the law provides and still achieve the desired marking.
- the square footage requested for both the LED and the conventional sign is substantial.
- the evidence in the record demonstrates that it is near several residential structures and based upon the size would have an adverse effect on the environmental conditions.
- the difficulty is self-created as the sign is self-created; it is something the applicant seeks to enhance marketing and visibility.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

**MOTION CARRIED.**

**New Business****Appeal No. 1**

Lorna Heim  
Residential Single Family

Requests the Board of Appeals approve and grant a 6' variance to allow for a 4' side yard setback to an accessory structure (generator) at 4645 Schurr Road.

Appeal No. 1 is in variance to §229-55(E)(1).

**DISCUSSION:**

Lorna Heim is present. She loses electricity quite often on Schurr Road and would like a back-up generator installed. There is an air conditioning unit on the outside of the house.

Mr. Michnik said he questioned the applicant about the location of the generator and asked if it could be moved to the back. The applicant said it would be more expensive to do that. Mrs. Heim does not want to put the generator in the back of the house, but if she has to she will. Mr. Michnik asked what type of landscaping would be done to shield the generator from the neighbors if the variance was granted. She would do anything they want. She asked her neighbor next door and they don't care that the generator is located there.

Two (2) neighbor notification forms are on file.

Anderson will be doing the work.

**ACTION:**

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 1, as written the condition that landscaping be put around the three (3) out sides of the generator to shield it from the street and the neighbors. The landscaping is to be the same height as the generator.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

**MOTION CARRIED.**

**Appeal No. 2**

Kenneth Thompson  
Residential Single Family

Requests the Board of Appeals approve and grant a 35' variance to allow for a building lot having 90' of public road frontage at 8880 Clarence Center Road.

Appeal No. 2 is in variance to §229-50(A).

**DISCUSSION:**

Ken Thompson is present along with his wife Dawn and step-daughter Julie. Julie is the one who wants to build the house on the property. Mr. Thompson said there is actually 100' of frontage but there are 25 acres in back, so the lot could be deep if there is a certain amount of square feet needed for a building lot. Mrs. Burkard asked if there is any way the applicant could go any wider. Mr. Thompson said he could approach the Town of Clarence to buy some land. Dawn said they own the entire corner and they could have it surveyed or re-deeded. She noted that the property has been in the family for 150 years before there was zoning. Mr. Thompson's father built his house with 125' of frontage, then Mr. Thompson built his house on 125' of frontage, now they want to build on the 100' of frontage that is left. Her daughter needs to live on the property if she wants to run the business in the future. The house would be approximately 1700-1800 square feet, 55' wide so there will be 20'-30' on either side of the house, a two-story colonial with three bedrooms.

Mr. Thompson said that lot narrows in the back because at one time there was a railroad siding that went along side of the bike path and it gets wider and wider as it gets to the back of his property.

Mr. Michnik asked why the applicant can't deed some property from their house on Clarence Center Road to obtain the right frontage for this new lot. Mr. Thompson said there is a gas well on the property. Dawn said they don't wish to do anything with that side of the property because the mum field is there. Mr. Michnik suggested the property be used as access to build a house in the back. Dawn said that was one option but she wasn't sure if that would require a variance because the other houses in the area are in a line and this house would be setback. It is confirmed that a variance would be needed to build back there. Currently, it is not a deeded lot.

There is one neighbor notification form on file.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 2, as written because the lot does not conform to the building codes in the Town of Clarence, it has never been a deeded lot.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Nay		

**MOTION CARRIED.**

**Appeal No. 3**

Cindy Youngers/Cara Mia Pet Spa  
Major Arterial

Requests the Board of Appeals approve and grant a variance to allow for the installation of four (4) separate signs upon the exterior window space of a single business establishment within a plaza building at 6429 Transit Road.

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

**DISCUSSION:**

Cindy Youngers, owner of Cara Mia Pet Spa, is present. John Fletcher, of Fast Signs, is also present. Mr. Fletcher explained that Ms. Youngers is just starting the business and can't afford to put signs up on a building and/or a pole. She would like Mr. Fletcher to come up with an affordable sign and to cut down on the glare from the afternoon sun that comes through the windows of the building. Mr. Fletcher shows the board material that can be placed on a window to cut down on the glare of the sun; a message can also be printed on this material, but this option is not being proposed. Ms. Youngers put film on the inside of the glass to cut down on the glare, the proposed sign is vinyl and would be placed on the outside of the glass.

Mr. Michnik asked if there was a sign going up at the road. Ms. Youngers explained that there is a new tenant going in the plaza and there is a major addition going on, she did not want to invest in a road sign if it might change. She is already in the building and will open in approximately three (3) weeks. There will be no overnight guests. She has a treadmill and a K-9 Club, Cara Mia is not your typical doggie daycare or kennel; it is a resort.

Mr. Michnik voiced his concern with setting a precedent for neighbors in the plaza who might want the same type of signs approved. The Sign Law has rules that are set up for certain reasons, a lot of time and effort went into creating that Law. He suggested waiting to see how the plaza gets redone and then come back before the Board with a sign for the street.

Mr. Mills shared Mr. Michnik's concerns. He noted that the logo is on each window and asked if that could be decreased to show it only once. Ms. Youngers said she thought of that but in terms of symmetry it wouldn't work. Mr. Mills said it seems that the advertising could be accomplished with just one window, perhaps the first closest window to the door. Technically, the proposal is for four (4) signs, only one (1) is allowed. Ms. Youngers said she counted nine (9) signs at the NOCO station on the corner of Clarence Center Road and Transit Road. Mr. Fletcher said there is a lot of inconsistency in terms of what signage is allowed and what kind of a store it is. Deputy Town Attorney Steve Bengart said there is no inconsistency; the Town may not have been aware of the signs, but now that they are, it will be addressed. Mr. Callahan said signs are allowed on the inside of windows so the solution is for the applicant to put the signs on the inside of her windows, they are not allowed on the outside of the windows. Mr. Fletcher said the sticky part of the vinyl sign is on the back of the sign so you can't get the same effect if you put the sign on the inside of the window. He said a sign is a sign no matter if it's on the inside or outside of the window, he asked what the difference is. Mr. Michnik asked if the sign could be printed so that the sticky side is on the other side of the sign so it can be placed on the inside of the window. Mr. Fletcher said no, not really. Mr. Michnik suggested making a vinyl sign and hanging it on the inside of every window. Mr. Fletcher said technology has not reached that point yet. He said the film that Ms. Youngers has installed on the windows makes a great background for the white signs they are requesting. Ms.

Youngers and Mr. Fletcher agree that the sign could be put in one window instead of spreading it out over four (4) windows.

Chairman Henning voiced his concern that this may set a precedent in a small plaza and if all the businesses in the plaza wanted signs like those being requested he doesn't think it would look good.

There is one neighbor notification form on file.

**ACTION:**

Motion by Arthur Henning, seconded by Patricia Burkard, to **deny** Appeal No. 3, as written.

**ON THE QUESTION:**

Mr. Michnik asked if the Chairman Henning would be willing to amend the motion with the codicil that one decal on the outside of the window be put on one (1) pane versus four (4) panes. Chairman Henning does not think that is germane to what the Board is trying to do.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 3, amended to allow one (1) sign in the window closest to the door (the north most window) with four (4) items listed on that one (1) window.

**ON THE QUESTION:**

It is noted that if the applicant wants to advertize on the pole sign once it is erected, the Zoning Board of Appeals can mandate that she remove the window sign(s).

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 4**

Joe Mattina  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 10' variance to allow for a 5' side yard setback for the construction of a new residence at 7131 Salt Road.

Appeal No. 4 is in variance to §229-41(B)(2).

**DISCUSSION:**

Joe Mattina is present, he owns 7141 and 7131 Salt Road. He explained that he wants to build a house further away from the barn; the lot to the right of him is not a buildable lot. He would like to start building in March 2013. He said the plans have been approved by the Town. He spoke with his neighbors and they do not have an issue with the request.

Mr. Michnik does not see why the applicant wants to build the house so close to the property line, he would prefer the house be built per code, 15' off the lot line.

Mr. Mattina explained that he owns the three (3) buildings to the west, which consist of a barn and two houses at 7141 Salt Road.

Mr. Mills asked who owns the buffer area to the east of 7131 Salt Road. Mr. Mattina said he spoke with the owner of that property about two weeks ago. The proposed house is almost 3,000 square feet with a five (5) car garage. He wants to keep it in close proximity to the pool. Mr. Mills asked if the applicant approached the landowner to the east to see about purchasing some of that property. Mr. Mattina did and the landowner told him to get the property appraised and then make an offer on it. There are 40 acres of wetlands in the back of the property. Mr. Mills said if the applicant bought 10' of the neighbor's property he would not need a variance. The applicant has owned his land for a year and a half.

**ACTION:**

Motion by David D'Amato, seconded by Ryan Mills, to **approve** Appeal No. 4, as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 5**

Justin Zahn

Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for the construction of a detached accessory structure (shed) within the front yard space of a primary residence at 10603 Miland Road.

\*Shed is currently partially constructed.

Appeal No. 5 is in variance to §229-44(E).

**DISCUSSION:**

Justin and Sara Zahn are present. Mr. Zahn explained that his house is fairly new; however, his builder stranded him about half way through the construction and left with a lot of Mr. Zahn's money. Mr. Zahn's original plan was to build an additional detached garage. He is combining two households and does not have the storage space to accommodate that and the only thing he had money for was a shed. He wants to match the siding to the house. He was going to locate the shed behind the house but that area is a wet area, even with the current dry spell. He thought of bringing in fill to build up the area but that did not seem plausible for a shed. Mrs. Zahn suggested putting the shed off the cement apron in front of the house. To put the shed off the apron they had to bring in a load of stone and put in sonic tubes, the shed couldn't be moved back because then it would be too close to the house. When construction was started on the shed, Mr. Zahn was not aware of the zoning laws that did not allow a shed to be installed in the front of the house; however, there was really no other option. The wall height of the shed is 12', the peak is approximately 14.5'. Mr. Zahn's property is just over 4 acres, with 175' frontage.

There is one neighbor notification form on file. Mr. Zahn notified both neighbors and neither has an issue with his request.

Mr. Michnik would like to see the shed moved to the back of the house where it is supposed to go. He does not want to set a precedent for the street. The structure sticks out where it is located now. This will have an adverse affect on the character of the neighborhood. This is a substantial request; it changes the entire appearance of the applicant's home as well as surrounding properties. By not doing research ahead of time, the applicant self-created this hardship.

Mr. Mills agreed with Mr. Michnik's comments and noted that there aren't any other sheds in close proximity in the front yard of a property. There are other options, the structure could be attached. Mr. Mills does not believe the applicant needs a variance. Mr. Zahn said he currently has a portable shelter in the back that is housing a golf cart and two snowmobiles. He also has a tractor with property maintenance equipment. He does not have the money to build an attached garage or anything but a shed. Nor does he have the money to move the shed this year. It won't happen. He does not have the ability to tear the shed down and continue working full time. He would be forced to use the portable shelter and leave the stuff outside.

Mr. D'Amato agreed that this hardship is self-created. The property is large enough that the applicant can locate the shed somewhere behind the house. The applicant brought in enough fill to do this. The current location of the shed creates an eye-sore. Mr. D'Amato said the Zoning Board is not going to break or amend their laws because of Mr. Zahn's mistake.

The shed is five feet forward of the house. Mr. Zahn said he might be able to reduce the height of the shed if the Zoning Board wanted that. Mrs. Zahn suggested landscaping around the current location of the shed. She also asked if it would help to get the variance granted if they collected more signatures from surrounding neighbors saying they have no issue with the request. She also said the structure won't stick out once it is complete because the material will match the house. Mr. D'Amato explained that would still change the neighborhood and that is part of the criteria that the Board needs to review; they need to look out for the future of the Town.

The question is raised asking if a variance is needed if the structure was moved five feet back. Mr. Callahan said the law states that the structure cannot be forward of the façade of the house.

Mrs. Burkard agreed with the comments made by the Board. The structure sticks out and may be a detriment if the owner tried to sell the home in the future. It is clarified that the applicant obtained a building permit, but he was unaware that the location would be a problem.

### **ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 5 based on the five (5) criteria discussed. The applicant is to remove the shed.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Nay		

MOTION CARRIED.

The applicant is referred to Dave Burke of the Building Department. Mr. Burke is the agent in the field and can answer Mr. Zahn's questions regarding the building permit and the Building Code.

### **Appeal No. 6**

Dale Cowan  
Agricultural Flood Zone

Requests the Board of Appeals approve and grant a 2.1' variance to allow for the construction of a detached accessory structure 1.1' below the base flood elevation of an existing building lot within the Floodway Density Zone at 7760 Northfield Road.

Appeal No. 6 is in variance to §107-5(C)(1).

### **DISCUSSION:**

Dale Cowan is present and said he does not see the need to go much higher than what it is at. The adjacent properties are the same.

Chairman Henning said there is a memo from Kathryn Vergo, Civil Engineer, dated August 30, 2012 on file. The applicant has a copy of the memo and understands what is being asked of him.

Mrs. Burkard asked what the applicant's objection is to building the structure correctly. The pool house is 20' away from the proposed site. He doesn't see what he will gain by going higher than what is already

there. The pool house is higher than the road and he wants to make the structure the same height as the pool house.

The structure will be used for storage and a small workshop. There will be no animals and there will not be a business run out of the structure. He and his son will work on their vehicles. Mr. Cowan may do some carpentry out of the structure but just as a hobby.

There will be no blacktop as a vehicular driveway to the structure; however, there may be some gravel. The pool house has not flooded in the seven (7) years in which Mr. Cowan has lived there.

#### **ACTION:**

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 6 with the acknowledgement that the applicant understands all the risks associated with this variance, specifically the memo dated August 30, 2012 from the Engineering Department. The conditions of said memo must be met.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

#### **Appeal No. 7**

William and Deborah Fedor  
Residential Single Family

Requests the Board of Appeals approve and grant a 130 square foot variance to allow for the construction of a 330 square foot detached accessory structure (shed) at 5025 Red Tail Run.

Appeal No. 7 is in variance to §229-55(H).

#### **DISCUSSION:**

Bill Fedor is present and explained he has a lot of equipment in his garage and he would like to move it out to a separate storage shed to make space for cars. The size of the shed is dictated by a few things such as he needs to store extension ladders that are 17' long. He would also like to store a utility trailer, a few lawn mowers, a snowmobile and a generator. He originally considered a shed that did not need a variance but did not think that would be large enough. Located on the property behind him is a garage with the same dimensions that he is asking for. He tried to minimize the impact to his neighbors when considering the location for the shed. He moved the shed 10' back in an effort to tuck it behind an existing pine tree.

Chairman Henning referred to a memo from Kathryn Vergo, Civil Engineer, dated September 11, 2012 and made the applicant aware of the memo. The memo states that the applicant is required to sign a Private Drainage Easement Agreement prior to any land disturbance on the site.

Mr. Fedor said the materials will consist of slab foundation and poured cement meeting the approved footings meeting the code. It will be a 2' x 4' side construction, vinyl siding to match the house, roof angles and materials to match the house as well. There will be an eight foot wide overhead door and a man door on the right as you face the structure. The structure will be 15' high. Mr. Fedor is doing the

construction. There will be no path to the structure; the lawn mower will be parked in the structure but no motor vehicles.

Mr. Mills asked if the applicant could go 15' x 20'. Mr. Fedor said he was trying to match the pre-existing structure, he is flexible but would like to build as large as he can.

There are three neighbor notification forms on file.

There will be no electricity in the structure. The items that Mr. Fedor wants to store in the proposed shed are currently in his garage. He has owned the property for 14 years. The sport utility vehicle will be parked in the current garage once the shed is built.

Chairman Henning asked about the white fence he saw when he visited the property. Mr. Fedor said there is no fence near his property.

Fran Randall, of 5045 Redtail Run, voiced her concern regarding the size of the shed and if a concrete slab is installed she is worried it will change the drainage and she will get water on her property. Mr. Michnik asked if Ms. Randall's other neighbor's shed causes drainage issues on her property. Mr. Callahan said that would be addressed in the permitting process by the Building Department.

Mark Nagel, of 5055 Redtail Run, is concerned with aesthetics. There is a lot of greenspace that the neighbors look at. He said there is a better alternative which is to build the shed on the northeast corner of the lot where it is more wooded; this would have the least minimal affect on the three neighbors adjacent to the property along the west. He said there was a similar case in 2010 which was denied because it changed the character of the neighborhood on two different Town Codes. Mr. Nagel submits photos showing the view of the surrounding neighbors, which is green. Deputy Town Attorney Steve Bengart said the variance request that was denied appears to be at 4510 Greenbriar Road.

Mr. Fedor said the greenspace is his backyard and a structure that meets the code may be more objectionable to the neighbors. A 6' fence would be permissible around the structure; this would have a far larger impact. Mr. Nagel said the proposed location of the shed could adversely affect the property values of the three houses. Mr. Fedor said a different location may be better for Mr. Nagel but may inconvenience other neighbors.

Mrs. Burkard asked why the applicant does not want to locate the shed on the other side of his property. Mr. Fedor said there is a lot of action going on in that area due to other structures in the backyard such as the pool filter. There are also many mature trees in that area and one would have to be cut down if he located the structure there. The neighbors on that side of the property would probably not be happy with that location either. Regardless of the shed's location someone will be unhappy, even if it is to the code requirements.

Mr. Michnik asked Mr. Nagel when he purchased his property. Mr. Nagel said he wanted a wooded lot so he purchased the only wooded lot that was available and built his house on it. He did not have an objection to building his house next to the lot with an existing shed on it, which is the same size as what Mr. Fedor is proposing. Mr. Nagel did not necessarily like the shed but said the desire to have a wooded lot outweighed the fact that the shed was built on the property next to his.

It is clarified that Mr. Fedor wants to locate the shed so that his line of sight will be his structure instead of the unsightly view of the neighbor's pool house and filter that is there now.

Mr. Mills asked what Mr. Fedor would decide if he had to choose between scaling back the size of the shed or re-locating it. Mr. Fedor said he would rather scale back the size.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 7 with the adjustment that the size of the structure be amended to 15' x 20'. Shrubbery is to be selected and installed to block the view of the shed from the adjoining neighbors to the west.

Patricia Burkard	Nay	David D'Amato	Nay
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 8**

Brian and Randa Wright  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) a 24' variance to allow for a 21' front yard setback to a primary residence.
- 2.) a variance to allow for a front yard setback less than 35'.

Both variances apply to the request to allow for the construction of an addition to an existing attached garage on a corner lot at 4828 Smiley Terrace.

Appeal No. 8 is in variance to §229-52(A)(3).

**DISCUSSION:**

Gerald Shaffer is the architect for the project and will represent the Wright's. Mr. Wright is out of town on business this week. Mr. Wright prepared a statement; it has been placed in the file. Mr. Shaffer explained that the intent to convert the existing garage to living space is so Mr. Wright's mother-in-law could move in. The Wright's have been in the house for 15 years, they have two daughters in the high school and a son in the middle school. They have done a great job maintaining and updating the house and they want to remain there. Mr. Wright has wanted to re-orient the garage so that the driveway comes off Smiley Terrace for a long time now, so it would be out of the heavier traffic on Kraus Road. Mr. Shaffer said they looked at putting the addition on the rear of the house but the septic system is there. The area over the new proposed garage would provide a lavatory, a washroom, an exercise area and expand an existing closet. Currently, the mother-in-law uses the family room as a bedroom.

There are two neighbor notification forms on file.

Mrs. Burkard voiced her concern with the line of sight that may be blocked by the addition when driving out of Smiley Terrace to Kraus Road. Mr. Shaffer said there are usually cars parked in the driveway that

would block the line of sight more than the proposed addition would. He considered the view and he does not feel it will be blocked by the addition.

Mr. Shaffer said all three sides of the façade for the first floor will be brick to match the house. The second floor will be a wood or fiber re-enforced cement siding to match the house. The estimated cost for this addition and new driveway is \$200,000, it is an 1100 square foot addition.

**ACTION:**

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 8, as written.

**ON THE QUESTION:**

Mr. Shaffer said there will be a sidewalk between the new garage and the front door.

Patricia Burkard	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

**Appeal No. 9**

Lindy Ruff  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) a 1,240 square foot variance to allow for a detached accessory structure 1,440 square feet in size.
- 2.) a variance to allow for both an attached and detached garage.

Both variances apply to the request to allow for the construction of a new detached accessory structure (garage) at 5006 Winding Lane Farms.

Appeal No. 9 is in variance to §229-55(H).

**DISCUSSION:**

Lindy Ruff is present and explained he needs the structure for storage of two lawn mowers, two snowmobiles, a 4-wheeler, a trailer, an antique car and his children’s cars when they go off to college.

Mr. Michnik asked for details on the construction materials. Mr. Ruff said half the material will match the house and the other half will be barn-like. He would like to put a cupola on it, the garage doors would look like barn doors, and there will be shutters on all the windows with flower boxes under the windows. Parco will do the construction. There will be a cement floor, but it will be installed later, not right away.

Mr. Mills suggested the applicant explore matching the siding of the proposed structure to the house. He noted that the window dressings will mitigate the all-metal look; being tucked back on the property helps to mitigate as well. Mr. Ruff said they are going to landscape around the structure; they want to install shrubbery that will hide half the building. The elevation is slightly lower in that area.

Mrs. Burkard said normally the size of the structure would be considered substantial but given the size of the property it's on and the fact that the property is isolated, the size seems acceptable. Chairman Henning agreed.

There is one neighbor notification form on file. That neighbor is the only neighbor that will see the building.

**ACTION:**

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 9, as written.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** the minutes of the meeting held on August 14, 2012, as written with the following corrections:

-Page 2012-62, third paragraph from the bottom, the word "mish-mosh" is corrected to read "mish-mash".

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 9:23 pm.

Carolyn Delgato  
Senior Clerk Typist