

**Town of Clarence**  
One Town Place, Clarence, NY

Zoning Board of Appeals Minutes

Tuesday, August 8, 2023

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

Zoning Board of Appeals members present:

Chairman Ryan Mills  
Richard McNamara

Patrick Krey  
Gerald Drinkard

Raymond Skaine  
Patricia Burkard

Town Officials present:

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

Other Interested Parties:

Ari Goldberg  
Kristen Alexander

Brenden Diaz  
Joel Harden

Jack Stainbrown  
Kevin Hahn

Dennis Mayer  
Carolyn Hahn

**OLD BUSINESS**

**Appeal No. 1** (from the July 2023 Meeting)

Oasis Homes of Western New York LLC  
Residential Single-Family

Town Code Reference:

1. §229-52(A) \*Average front yard setback within 500' is 89'.
2. §229-52(A) \*Average front yard setback within 500' is 95'.

Note: This request supersedes the July 2023 variance request, which was tabled.

Applicant requests variances:

1. to allow a 60' front yard setback fronting Thompson Road; and
  2. to allow a ~~60'~~ 50' front yard setback fronting Roll Road;
- located at 5575 Thompson Road.

**DISCUSSION:**

Ari Goldberg from the law firm Barclay Damon was present on behalf of the applicant, and reviewed the variance request as previously presented to the Zoning Board of Appeals on July 11, 2023.

Mr. Goldberg noted that based on the feedback from the Board as well as comments from the public, they are here to present a revised project.

The amended request has the septic system placed in the front yard of the property, which opened up the ability to set the proposed home further back from Thompson Road. Initially they had proposed 45 ft. from Thompson Road, and the revised plans are 60 ft. from Thompson Road.

Mr. Goldberg stated that they are also in the process of working with the Federal Emergency Management Agency (FEMA) who administer the Floodplain map, to remove a portion of the backyard from the floodplain.

Referring to previous discussion about the clear vision triangle at the intersection of Roll Road and Thompson Road, Mr. Goldberg stated that after further review, they have determined that a 60 ft. setback from Roll Road would be doable. This would shift the entire proposed home down an additional 15 ft. and closer to the adjacent property, changing the originally proposed 23 ft. side yard setback to 13 ft., to accommodate the 60 ft. Roll Road setback.

Mr. Goldberg added that the size of the house in general has also been amended, taking it from the originally proposed 3,900 sq. ft. to 2,900 sq. ft.

Mr. Goldberg explained that granting the requested variance would demonstrate a substantial benefit to the applicant who would be permitted to build his single-family dwelling. Also, there will not be any detriment to nearby properties with the permitted single-family dwelling, as the setbacks are in consideration of the intersection, and neighboring properties.

Mr. Goldberg stated that there is no alternative feasible method. Originally, they had proposed 45 ft. but based on feedback from the Zoning Board as well as neighbors, they have adjusted that to 60 ft.

Mr. Goldberg reiterated that strict compliance renders the lot basically unbuildable.

Lastly, Mr. Goldberg noted that the variances are not substantial, and do not cause harm or are they a detriment to the neighborhood. There is no self-created hardship, as the setbacks are established and determined by the Town of Clarence.

Mr. Drinkard stated that Mr. Goldberg and the applicant have completed everything that had previously been discussed and suggested.

Mr. Drinkard asked Mr. Goldberg if there is any concern with moving the proposed house so close to the neighboring property line.

Mr. Goldberg responded that there is a balance. They are proposing the 60 ft. setback from Roll Road based on some previous input by Board members, and it can be a sliding scale, and adjusted per the Board's wishes. Whatever the Zoning Board deems a minimum variance, they will be comfortable with and adjust accordingly.

Mr. Skaine asked how high they intend to make the proposed berm on Roll Road.

Mr. Goldberg responded, stating that they have previously planned to bring it down to the level of the front of the proposed house, but if it is the Board's wishes, they can completely level it.

Mr. Krey asked for clarification regarding the side yard setback on the South side of the property, and whether one was required.

Mr. Bleuer stated that the side yard setback on the south side of the building is 12 ½ ft. minimum, and with the applicant's proposal being just under 14 ft., it is not a required variance.

Mr. McNamara asked Mr. Bleuer which application is being considered, the previous one or the new one.

Mr. Bleuer explained that on the agenda for this evening is the current application. However, the Board has the ability to vary the Roll Road setback to be a level of compromise between the two numbers.

Mr. McNamara stated that he would prefer to see the setback at 50 ft. on Roll Road, and would prefer to see the berm removed completely.

Mrs. Burkard agreed with the changes that have been made.

Chairman Mills stated that the updated application and variance requests have made good progress, and that there can be some additional modifications to the Roll Road setback.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, the following residents spoke:

1. Kevin Hahn of 5565 Thompson Road:

- fully in favor of house built next door
- would like the house to be built with respect for the existing neighbors
- while all of the adjustments have met the concerns of the Board, nothing has been done to mitigate his concerns
- the proposed house is basically in their front yard, and completely out of line with the rest of the neighborhood
- major concerns of privacy on all sides of their house
- moving the proposed home to the bare minimum of the setback puts the home too close to theirs

2. Carolyn Hahn of 5565 Thompson Road:

- vehemently opposed to the proposed home being built so close to their home
- building the proposed home right up to their property line is ridiculous
- doesn't live to the intent of the neighborhood
- the house is under pre 2005 frontage rules, therefore smaller frontage but being built to 2023 building plans; a big house on a small property
- asks to have their privacy and neighborhood respected

Chairman Mills asked Mr. and Mrs. Hahn what they would prefer in regards to the side yard setback.

Mrs. Hahn responded that going back to a 25 ft. side yard setback with a berm between their house and the proposed house would be acceptable. She would prefer to have them in line with the other houses on

the road but with that not being possible, they appreciate some type of mitigation up to the garage in terms of a tree line and berm.

Public Participation was closed for this item.

Mr. Goldberg stated that they would be agreeable to a berm along the side yard with evergreen landscaping.

Discussion continued regarding potential proposed berm and tree planting.

Regarding berms along property lines, Mr. Bleuer explained that it may not even be able to be approved between the Engineering and Building departments. Mr. Bleuer recommended the Board specify landscaping, but leave the berm to Building and Engineering review and approval.

**ACTION:**

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** Appeal No. 1 under Old Business as modified, with the following conditions:

1. pine trees planted from the 1<sup>st</sup> garage window extending back the length of the house, plus at least an additional 25 ft., staggered every 12 feet, and at least 4 ft. tall;
2. removal of the berm on the north side of the property

**ON THE QUESTION:**

Mr. Krey stated that by permitting this variance, the benefit to the applicant is that the lot is not buildable according to existing code, making the variance necessary.

Mr. Krey added that by placing the conditions on the variance approval, mitigate the concerns brought forth by the neighbors. Additionally, it will fit in nicely with the neighborhood.

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

MOTION CARRIED

**NEW BUSINESS**

**Appeal No. 1**

Buffalo Modular Homes | Dennis Mayer  
Agricultural Floodzone

Applicant requests a variance to allow a detached accessory structure to be located within the front yard setback located at 8500 Northfield Road.

Town Code Reference:  
§229-34(E)

**DISCUSSION:**

Homeowner Dennis Mayer, and Jeremy Bates with Buffalo Modular Homes were present to represent this request.

Jeremy Bates stated that they are seeking an 8 ft. variance for the construction of a carriage house, bringing it closer to the road than the existing house structure. The way the property sits, it works out best to position it where they are requesting, due to significant tree cover to the north for that neighbor whose home is significantly closer to the road, as well as the neighbor to the south.

Mr. Bates stated that there are existing trees and greenery at the front yard of the house, and he feels that the proposed accessory structure would blend in well, and he believes it will be unnoticed.

Chairman Mills asked what the structure will be used for.

Mr. Mayer explained that it will be used as his residence. His daughter and her family will take over residency of his home where he currently lives. This allows him to stay on the property that has been home to him for approximately 50 years, and allow him to further enjoy what he has worked to have.

Mr. Bates stated that the plan is to have a 3-car garage with an in-law suite above.

Chairman Mills asked Mr. Bleuer if this raises any issues in terms of two single-family homes located on one parcel.

Mr. Bleuer explained that it would be subject to a Special Exception Use Permit (SEUP) as issued by the Town Board for a secondary living unit. The Planning Board has reviewed this request, and have recommended issuance of the permit subject to this variance being approved. A yearly certification process would be required that assures it is not being used as a rental property.

Chairman Mills confirmed with Mr. Mayer that he understands this would not be allowed to use as a rental unit, and that a condition may be placed stating it is not to be used for renting or business use.

Mr. Mayer responded yes.

Mr. Krey asked if they looked in the area for similar size structures also located in the front yard.

Mr. Mayer stated that he wants to say on the property itself, so he looked at things from that standpoint.

Mr. Krey asked if there were other houses along the road or adjacent road that have similar size garages or accessory structures in the front yard.

Mr. Mayer responded yes, there is one down the road that is used as an additional home for the homeowner's parents, and there is also a two-car garage on the property.

Mr. McNamara asked if they have considered making it even with the front of the existing house so as to not need a variance.

Mr. Mayer stated that they would get too close to the barn that way, which would then need to have firewalls added, driving up the cost. Additionally, the aesthetics of the views and surrounding area would also be minimized if it was placed back closer to the barn.

Mr. Bates added that if they go further north away from the existing house, and further west which is closer to the barn, the property is available to do that with but the property slopes downward on the north

side of the property. They would then need to take down more trees, and build it up to compensate for the sloped land. The more natural position for it is where they are requesting to place it.

Mr. Mayer explained that there is a drainage system that runs under the asphalt from the house, and if he moves the house back, he loses the drainage system and would need to remove and update that, causing additional work and costs.

Mr. Mayer stated that they had the land raised when he first moved there, and have put substantial work in to raising it with fill.

Mr. Drinkard stated that he feels his questions have been answered, and he likes the plan. It will be a very nice structure and work well with the property, the addition would not be out of context or character with neighboring properties along the street.

Mr. Skaine confirmed with Mr. Mayer that he has agreed to all of the Planning Board's conditions, as listed in Exhibit A.

Mr. Mayer responded yes.

Chairman Mills asked about the right-side elevation, which faces the street – concerns with aesthetics with one window as shown in Exhibit B. Perhaps adding shutters to the window, or wrapping around the vinyl cedar shake siding from the front of the proposed structure.

Mr. Mayer explained that is where the steps leading up to the house are located, which is why there is only one window.

Chairman Mills stated that he would like to see the side elevation dressed up and mitigated so that it is not a wall of white.

Mr. Bates responded that there are multiple options that they could do, for instance they could put up shutters, or perhaps bring the cedar shake siding around from the front. Mr. Bates also stated that they could possibly put in some windows from the first-floor garage.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

#### **ACTION:**

Motion by Ryan Mills, seconded by Patrick Krey to **approve** Appeal No. 1 as written, with the following conditions:

1. applicant agrees to meet all of the conditions set forth by the Planning Board
2. no business is to be conducted from the structure, nor is it to be used as a rental
3. along the right elevation (facing the street) the top half is to be vinyl cedar shake with shutters matching the front façade

**ON THE QUESTION:**

Chairman Mills stated that due to the size and environmental characteristics of the site mainly the dimensions and acreage of the site, the natural foliage buffer along the north side, it will not alter the character of the neighborhood.

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

**MOTION CARRIED****Appeal No. 2**

Lance Fiegl  
Traditional Neighborhood District

Applicant requests a variance of 336 sq. ft. to allow for a 1,056 sq. ft. detached accessory structure located at 5919 Goodrich Road.

Town Code Reference:  
§229-66

**DISCUSSION:**

Lance and Jacquelyn Fiegl were present to represent their request. Mr. Fiegl explained that they would like to replace a 1.5 car garage with a larger two-car garage with an attached patio on the back. Mr. Fiegl added that essentially it is a replacement of the existing building, just 10 ft. longer and 10 ft. wider.

Mr. McNamara noted that the current garage is a bit old and small, he understands the desire to increase the size. The back patio will resemble what is currently there, but slightly increasing the size.

Mr. McNamara asked what materials will be used.

Mr. Fiegl responded that he intends to build it as a pole barn type structure with steel siding and a steel roof, with colors either matching the house, or a darker shade that will be less intrusive.

Mr. Fiegl noted that he is modeling his plans similar to a structure located at 6129 Goodrich Road. He included a photo of that structure in his file, which Chairman Mills entered in to the record as Exhibit A. Mr. Fiegl noted that his proposed structure will be smaller, but substantially similar.

Mrs. Burkard agreed that they will have more room with the proposed structure, and asked if there will be a door.

Mr. Fiegl responded that there will be a centered garage door, and a man-door on the side. The rear of the structure leading to the patio will have a 9 ft. x 7 ft. patio door with another man-door located on the back also.

Mrs. Burkard asked Mr. Fiegl if he will need to widen his driveway.

Mr. Fiegl responded that the driveway will tuck a little behind the house, but much of it will be obstructed by the house itself.

Mr. Krey asked if there will be any windows on the garage.

Mr. Fiegl responded yes; he’s planning for two on the north side, and two on the south side. He’d like to have the proposed structure match the house, and the house has shutters so he could also put shutters on the proposed garage.

Mr. Skaine noted that it will make the backyard very nice, a nice addition.

Mr. Drinkard asked if Mr. Fiegl has a shared driveway, and has his neighbor had any input or comments for Mr. Fiegls proposed garage.

Mr. Fiegl responded that he has spoken with his adjacent neighbors as well as those across the street, none of them have any issues.

Mr. Drinkard asked Mr. Fiegl if he intends to run a business from the proposed structure.

Mr. Fiegl responded no.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Patrick Krey, seconded by Ryan Mills to **approve** Appeal No. 2 as written with the following conditions:

1. colors are to match the house
2. no business is to be conducted from the structure
3. 2 windows on the north side and 2 windows on the south side of the structure

**ON THE QUESTION:**

The applicant has shown other similar structures located in the area, therefore granting the variance will not alter the character of the neighborhood, nor will it be a detriment to nearby properties.

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

**MOTION CARRIED**

**Appeal No. 3**

Tesmer Builders, INC.  
Residential Single-Family

Town Code Reference:  
Map Cover 3684 SL 207

Applicant requests a variance of 5' to allow a 5' rear yard setback to allow for the construction of a principal structure (single-family residence) located at 5481 Waterlefe Drive.



**DISCUSSION:**

Rick Tesmer with Tesmer Builders was present to represent the request.

Mr. Tesmer explained that their variance request is for a new construction at 5481 Waterleft Drive, with stone constructed stairs from the rear patio, 12 risers which will be approximately an 8 ft. drop to grade. This variance would provide access from the patio, the staircase can not be placed in a different area because it would block windows on the daylight basement with 2 rooms.

Chairman Mills noted that the best elevation depicting what Mr. Tesmer is requesting is no. 2 of 7, entered as Exhibit A, showing the rear and right-side elevations. It shows the additional stone walk way coming off the back of the house. It is not the actual living space of the house, but a section of the covered porch.

Mr. Skaine asked if the woods behind the property will remain or be developed.

Mr. Tesmer responded that there is a community property in the back and should remain as is.

Chairman Mills asked if it is permanent greenspace.

Mr. Tesmer stated that it is greenspace, albeit messy and needs to be cleaned up.

Mr. Drinkard asked about what appears to be a storm sewer entry point off the rear of the building.

Mr. Tesmer responded yes, ultimately it will flow in a westerly direction

Mr. Krey asked what is behind the Conservation area located behind the property.

Mr. Tesmer responded that the white fence is partial ownership of a large portion of land that runs north-south of the rear yards of all of the homes on Waterlefe Drive.

Mrs. Burkard confirmed that in order to enter the rear yard, the stairway will need to be accessed.

Mr. Tesmer responded yes; it is an 8 ft. drop.

Mr. Drinkard asked who physically owns the property to the rear.

Mr. Tesmer responded that it is Spaulding Green Development.

Mr. Drinkard asked if it will fall under the control of a Homeowner's Agreement (HOA), and does the agreement currently exist.

Mr. Tesmer responded yes.

Mr. Drinkard stated that all that takes place within the green area would be controlled by the HOA and the homeowners would have a copy of the agreement.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Gerald Drinkard, seconded by Richard McNamara to **approve** Appeal No. 3 as written.

**ON THE QUESTION:**

Chairman Mills stated that this does not appear to impact the character of the neighborhood, or any of the environmental conditions of the neighborhood, based on the fact that that the only component of the house protruding out is a portion of the porch that is not covered, and not the principal living space structure.

The rear area is a protected conservation area which helps to mitigate any additional distance.

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

**MOTION CARRIED**

**Appeal No. 4**

Joel Harden  
Residential Single-Family

Applicant requests a variance of 280 sq. ft. to allow a 480 sq. ft. detached accessory structure located at 5545 Herons Glen.

Town Code Reference:  
§229-55(H)

**DISCUSSION:**

Joel Harden was present to represent his request, explain that he would like to construct the detached accessory structure for their pool area in the backyard.

Chairman Mills asked why the additional size is being requested.

Mr. Harden responded that he plans to include three different areas within the space; a kitchen/bar area, a fireplace with small seating area, and a heated area as well.

Referring to the drawings that Mr. Harden submitted, entered as Exhibits A and B, Chairman Mills asked if they accurately show what the finished product will look like.

Mr. Harden responded yes, aside from the landscaping.

Mr. Drinkard asked if the outside of the structure will match the house.

Mr. Harden responded that the one wall on the back of the structure will match the house with the same siding and shingles as the house. The columns in the front are sized and styled to be the same as the columns located at the front of the house.

Mr. Drinkard asked if there will be landscaping suitable for a pool house.

Mr. Harden responded yes; their intention is privacy.

Mr. Drinkard asked Mr. Harden if he has spoken with his neighbors about his plan.

Mr. Harden said yes, neighbors on both sides none to the back. He provided the 3D color renderings to the neighbors on both sides so that were able to see the entire plan, they had no objections.

Mr. Skaine complimented the project.

Chairman Mills asked Mr. Bleuer if the covered patio portion is part of the overall dimensions of the project.

Mr. Bleuer responded yes.

Chairman Mills asked how much of the proposed project will be covered patio versus interior space.

Mr. Harden responded that the square footage requested in the variance request is the covered section, then there is additional patio space located around the pool.

Discussion continued regarding the covered patio space area.

Mr. Krey asked if there will be electricity run to the patio area.

Mr. Harden responded yes, electricity and gas.

Mr. McNamara noted that the area will be set down behind the house, and aside from the roof of the covered patio, will not be visible from the street.

Mrs. Burkard complimented the project.

Chairman Mills noted that the neighbor to the south will have a minimal view of the patio, but added that Mr. Harden intends to put trees in to mitigate that view.

Mr. Harden responded yes, he plans to put some sort of evergreen or similar back there.

Chairman Mills asked if they made it a condition that evergreen or spruce is to be planted along the south side, along the entire length of the back, would Mr. Harden agree with that.

Mr. Harden responded yes.

**ACTION:**

Motion by Raymond Skaine, seconded by Gerald Drinkard to **approve** Appeal No. 4 as written, with the following condition:

1. evergreens or similar to be planted along the back / south side of the structure

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

MOTION CARRIED

Meeting adjourned at 6:29 p.m. with a motion by Richard McNamara.

MOTION CARRIED

Amy Major  
Senior Clerk Typist