

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, March 12, 2024

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

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:

Violet Krey Mary Krey Mark Spoth Jordan Pulaski Dave LaDuca
Laurie Hauer-LaDuca

Motion by Gerald Drinkard, seconded by Patrick Krey, to **approve** the minutes of the meeting held on February 13, 2024.

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

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Mark Spoth
Traditional Neighborhood District

Applicant requests a variance to allow detached accessory structures to be located on a parcel without a principal structure located at 8345 Lapp Road.

Town Code Reference:
§229-58 & §229-66

DISCUSSION:

Jeff Spoth was present to represent his father's request, explaining that his parents would like to retire and move. They would like to sell their house but retain the barns to continue running the business out of them.

Chairman Mills asked who the legal owner is of 8345 Lapp Road.

Mr. Spoth responded that it is his dad, Mark Spoth, and he does have his permission to represent him and speak on his behalf tonight.

Mr. Bengart stated that he is comfortable with that.

Mr. Drinkard clarified with Mr. Spoth that his dad owns the parcel that includes the buildings to the rear where the house is located, at 8345 Lapp Rd.

Mr. Spoth responded yes.

Mr. Drinkard stated that what is being requested has nothing to do with the parcel to the east.

Mr. Spoth confirmed that to be true, adding that it is the same strip that is in line with the house. All they want to split off is the house and the lot that it is on.

Mr. Drinkard explained that it makes it confusing because the house and property that it is located on is in the Traditional Neighborhood District; it is a district that allows for single family residential and commercial. Mr. Drinkard noted that the other zones in the area allow for Residential Single-Family, as an example then transitioning to a Commercial district.

Adding that the Traditional Neighborhood District (TND) allows single family-residential, Mr. Drinkard stated that typically, a principal structure is defined as a home. Removing this home from the total lot would leave two barns that have business run out of them to remain on the lot.

Mr. Bleuer explained that this application is very nuanced, and there may be confusion as to why this did not go to the Planning Board. Mr. Bleuer further explained that rather than creating a new lot, as it would appear is being done, the lot already historically existed. It was merged with the house, in order for the owner to build an additional accessory structure. They are now seeking to re-split the property, as it historically existed, but due to the code requiring a principal structure, it requires a variance.

Mr. Drinkard stated that a principal structure is defined as a residence.

Mr. Bleuer confirmed that yes; in this instance, the principal structure is defined as the home.

Mr. Drinkard further explained that one of the issues that arises with removing the parcel containing the house away from the main parcel, is that you still need to access the back of the property. Because of this, there will need to be a 36 ft. easement to allow emergency vehicle access.

Mr. Skaine asked what the total width of the two properties is.

Mr. Spoth responded that he does not currently have that information.

Mr. Bleuer stated that as it is proposed, and as it historically existed, the house would have 100 ft. of frontage, and the parcel with the outbuildings would have approximately 127.5 ft. of frontage. If approved, it would be a good lot of record from the Town's standard.

Mr. Skaine asked if the pole barns will be remaining on the lot.
Mr. Spoth responded yes.

Chairman Mills asked Mr. Spoth if he has intentions to build on the front portion of the parcel.

Mr. Spoth responded that his dad has talked about it, and if they can't separate the house from the lot, it may be an option they consider.

Mr. Spoth noted that two houses down there is a barndominium in his pole barn, and wondered if that may be an option, making it the principal residence.

Mr. Bleuer stated that it could be considered, and would be subject to building and zoning code requirements. There is nothing that would prevent the applicant from exploring that possibility, and it may require a variance for a setback, bringing them back to this Zoning Board.

Referring to the Erie County Lot Line Application 2022 proposed conditions, provided as part of the application packet, marked Exhibit A, Chairman Mills noted that the home that is being considered to be sold off is on Lot 1. Lot A2 would exist without a principal residence, but subject to all standards and conditions would be a legal building lot.

Mr. Bleuer confirmed that is correct.

Chairman Mills confirmed that at one time lot A2 existed as a separate parcel.

Mr. Bleuer responded yes, and at that time it was required to be merged with Lot 1 when the owner pursued a building permit for the second accessory structure. Rather than seek a variance at that time, they merged the two lots together in order to comply.

Mr. Krey asked what business is currently being conducted out of the barn.

Mr. Spoth responded a plumbing and heating company.

Mr. Krey asked if Mark Spoth owns any of the neighboring lots.

Mr. Spoth responded no; most of it has been sold off.

Mr. Krey noted that the business that is operated out of the accessory structures and will continue to operate out of them, are the same businesses that were operating out of the structures before the lots were split. The lot with the home appears to conform to lots in the area, which will not create any substantial change.

Referring to Exhibit A,1 Mr. McNamara asked why lots B and C are color coded.

Mr. Bleuer explained that there are multiple other pages relating to the history of the area that at one point came off of a parent parcel. Individually it does not serve a purpose, but overall, they are incorporated in to the greater history of the area.

Mr. McNamara asked Mr. Spoth if he owns any of the property on either side of these lots. Mr. Spoth responded that along the west side, his dad (Mark Spoth) has an agricultural driveway. He did speak to the neighbor and agreed to sell him back a strip or chunk of the property if necessary.

Referring to the 36 ft. easement requirement, Mr. Drinkard asked if it encumbers the 126 ft. frontage lot. Because the driveway belongs to the back parcel. If you split off the front of a building parcel, its width will be compromised.

Mr. Bleuer explained that the existing driveway leading to the accessory structures would be on the accessory structure parcel. The applicant has expressed interest in an additional access point west of the home lot, with no need or requirement for easements from a Town perspective because of the existing associated frontage for the lot.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Gerald Drinkard, seconded by Patrick Krey to **approve** Appeal No. 1 as written, with the following condition:

- 1. any future proposed uses will be subject to town review

ON THE QUESTION:

Mr. Drinkard stated that the TND zone allows structures for business use only without a residential structure.

Additionally, Mr. Drinkard noted that since the remaining parcel will have buildings in the rear of the remaining parcel, §229-8 will require a 36’ wide easement be maintained for emergency vehicle access.

Chairman Mills noted that this application is very unique in that there was a pre-existing parcel that had these structures on it that existed for a number of years before it was merged. This makes it unique to past or present applications of similar nature.

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

MOTION CARRIED

Appeal No. 2

Jordan Pulaski
Planned Unit Residential Development

Applicant requests a variance of 404 sq. ft. to allow a 624 sq. ft. attached garage addition for a total of 1,364 sq. ft. of garage space located at 5883 Kilkenny Manor.

Town Code Reference:
§229-58

DISCUSSION:

Jordan Pulaski was present to represent his request, explaining that he is seeking the additional square footage for more space in his garage. His neighborhood does not allow a boat to be in the driveway so he would like to store it in the garage. Additionally, with an increase in car thefts in the area, they would like to have their vehicles in the garage.

Mr. McNamara asked what the front of the proposed garage will look like.

Mr. Pulaski responded, stating that it will be identical to the front of the house, with vinyl sided shake shingle with the matching stone, also on the front of the house.

Mr. McNamara asked if there will be a second floor to the proposed garage.

Mr. Pulaski responded there will be a loft area, but if used at all, it will only be for some storage. He is not sure at this point.

Mr. McNamara asked if there will be any electric or heat on the second floor.

Mr. Pulaski responded that the garage itself will have electric, but the second floor / loft area will not.

Mr. Krey asked if there are other homes in the area with garages added.

Mr. Pulaski responded yes; some of the original houses that are in the area had an 'L' shaped garage added on as part of the house, it is similar to those. Typically, there are a two-stall garage, then a third added on to form the 'L' shape.

Mr. Pulaski added that there is a house on Donegal with a garage addition very similar to what they are proposing.

Explaining that normally the street view of a garage addition is what stands out the most, Mr. Krey added that it is unsightly to have what appears to be a large garage with a small home.

Mr. Krey asked what the square footage of Mr. Pulaski's home is.

Mr. Pulaski responded that it is approximately 3,400 sq. ft.

Mr. Krey noted that with the side-load garage and the breezeway, there should not be any issues from a street view aspect.

Chairman Mills agreed that a side-load garage from a design perspective helps, and the breezeway helps to connect and tie it together with the residence.

Adding that the design elements of the stone and vinyl cedar shake are important, Chairman Mills confirmed with Mr. Pulaski that those will definitely be used.

Mr. Pulaski responded yes; the intent is to have it look like it was built with the house.

Chairman Mills asked if they make it a condition that vinyl cedar shake and stone at the front elevation to match the house, would that be agreeable to Mr. Pulaski.

Mr. Pulaski responded yes.

Chairman Mills asked Mr. Pulaski if he plans to run a business out of the garage.

Mr. Pulaski responded no; it is strictly for storage.

Mr. Skaine commented that he had the same concern regarding similar structures in the neighborhood, and that this will be the only structure in the immediate neighborhood of this design and size.

Mr. Skaine added that with Mr. Pulaski’s property sitting on a bike path, this will give them additional privacy.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

ACTION:

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

1. materials to match the existing house; cultured stone and cedar shake siding.
2. no business is to be conducted out of the building

ON THE QUESTION:

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

MOTION CARRIED

Appeal No. 3

Barry Yavener
Residential Single-Family

Town Code Reference:

1. §229-55(D)
2. §229-52(A)
3. §229-52(B)
4. §229-56

Applicant requests a variance:

1. of 480 sq. ft. to allow for a total of 1,440 sq. ft. of garage space; and
 2. of 6'10" to allow a 40'8" front yard setback; and
 3. of 1'11" to allow a 10'7" side yard setback; and
 4. of 2.5% to allow for a 20.5% lot coverage;
- all for the addition of an attached accessory structure (garage) located at 8690 Nottingham Terrace.

DISCUSSION:

Laurie Hauer-LaDuca , Architect for the proposed addition was present to represent the applicant.

Ms. LaDuca stated that Mr. Yavener would like the addition to his garage for his work space. Ms. LaDuca added that his existing detached garage is in very poor condition and the cost to remediate the existing garage, meet code, and add the proposed addition is not as cost effective as demolishing the existing garage and rebuilding.

Due to the zoning setbacks, a 10 ft. side yard setback would not work because Mr. Yavener would like the addition to be attached.

Per the site plan, the space between the existing garage and the home would be built out as part of the home, adding to the overall footprint of the home. The garage space is essentially the same, but with the added space behind the garage for work space, it involves multiple variances requests.

Ms. LaDuca continued to explain the variances, noting that Mr. Yavener wanted to bring the proposed structure forward more due to the sloping in the rear of his property. Bringing the structure forward helps to keep the slab level.

Referring to a photo of Mr. Yavener's home, Ms. LaDuca explained that the architecture is basic, and they would match that with the proposed accessory structure. The current space between the garage and the house would become connected. Visually from the street, it will look similar to what it currently does.

Chairman Mills entered 3 photos that Ms. LaDuca referred to in to the record as Exhibit A.

Ms. LaDuca stated that the photos are the architectural cues that they would use for the reconstruction of the garage.

Mr. Skaine asked how they plan to connect the house and the proposed garage, do they plan to build a breezeway.

Ms. LaDuca stated that the entire addition would be at the same level as the house.

Ms. LaDuca stated that there will not be any breezeway, the whole thing will be an attached structure. Mr. Yavener may decide to put in a door at some point, but not at this time.

Mr. Bleuer clarified that there will be an actual home addition extending to the new garage.

Ms. LaDuca responded yes; the current approximate 9 ft. of space becomes attached living space.

Mr. Drinkard stated that he spoke with Mr. Yavener regarding his plans for this space and he echoed what Ms. LaDuca is explaining. When it's all complete, the old garage will be gone, the house is expanded and will attach to the new garage / accessory structure. Mr. Drinkard noted that in speaking with Mr. Yavener, he added that if he can not match the siding of the accessory structure to the existing house, then he will re-side the entire house as well, so that it all matches.

Mr. Drinkard asked Ms. LaDuca if a condition was placed stating that, if necessary, the entire house will be resided in order to have the siding match, would she agree to that.

Ms. LaDuca responded that she believes that would be fine.

Mr. Bengart explained that agreeing to the condition is based on the representative for the applicant and if they are able to make such decisions and agreements.

Ms. LaDuca responded that she has not spoken about this particular subject with Mr. Yavener, only that he plans to match the proposed accessory structure to the existing house.

Mr. Drinkard explained that the neighborhood is very orderly, there are additions that have been added over time, it is a very landscaped and orderly neighborhood, and he does not believe this proposed accessory structure would be out of character.

Mr. Krey asked if there is authorization from the applicant giving Ms. LaDuca permission to represent him and speak on his behalf.

Mr. Bleuer responded yes.

Mr. Krey asked what the square footage of the home is.

Ms. LaDuca stated that it is 2,219 sq. ft. this includes that open area that will be built in, and the garage area that is 576 sq. ft. and the proposed work shop area is 864 sq. ft.

Mr. Krey asked Mr. Bleuer what makes the proposed work shop area part of the garage area and not part of the home.

Mr. Bleuer explained that without architectural drawings that is a difficult question, so in the interest of time, it is being calculated as garage space. There is chance that after it is designed, the Building Department may not classify it that way, but to be safe we are including it in the variance request as maximum potential.

Ms. LaDuca reviewed the uses for accessory structures as stated in the Town Code, explaining that they wanted to be sure to be as correct as possible.

Referring to the front yard setback, Mr. McNamara asked how much the back yard tapers down.

Ms. LaDuca explained that the front yard on the right-hand side is 47.68 ft., and code allows for a 45 ft. setback. The requested setback is based off of the existing setback.

Ms. LaDuca noted that the rear has a gradual downward pitch, so by bringing the structure forward there is a better chance of keeping the slab level. She is unsure of the specific measurements, but Mr. Yavener is aware of a current drainage issue, so bringing it forward will help prevent any further issues in the rear.

Dave LaDuca, Architect with Labella Architects stated that the grade that extends from the back of the garage to the rear of the yard is not significant, but is a gradual slope extending the length of the rear yard.

Discussion continued regarding the setback and the gradual slope in the rear yard.

Chairman Mills asked if there are any additional architectural drawings aside from the site plan that was provided. It is difficult to envision the end product without any supporting architectural drawings.

Ms. LaDuca responded no, further explaining that the proposed in-between space will have a single window to match the existing windows on the front. The existing gable roof will continue, extending on to the new garage.

Chairman Mills asked why there are no architectural drawings at this stage of the planning.

Ms. LaDuca responded that people are conscious of investing money in to design services until they know that they are able to do the proposed project.

Chairman Mills confirmed with Ms. LaDuca that per the site plan, area B will be living space.

Ms. LaDuca responded yes.

Chairman Mills noted that area D will have an HVAC system, asking Ms. LaDuca how the area will be heated.

Ms. LaDuca responded that they did not discuss it with the applicant, but she would assume it would be forced air.

Other than calling area D a workshop, Chairman Mills asked how else it would be classified.

Ms. LaDuca responded a multi-use space.

Chairman Mills noted that it will be fully insulated with windows and a heat source. In terms of differentiating it between a garage and living space, how will it be listed.

Ms. LaDuca confirmed that it would fall under multi-use space.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Patrick Krey, seconded by Raymond Skaine to **approve** Appeal No. 3 as written, with the following conditions:

1. siding of the addition is to match the house
2. no business to be conducted from the accessory structure.

ON THE QUESTION:

Mr. Bleuer noted that Customary Home Occupations would still be considered allowable, should they meet all the standards of the Town of Clarence Zoning Code.

Mr. Krey stated that this request is unique in that the square footage in the variance for the garage space includes the workshop space, which for all intents and purposes will be used the same as living space. It will be built on the to the addition made to the home, rather than all a garage. The proposed garage will not change any of the square footage, as it is replacing the current garage.

Chairman Mills added that the site plan will be marked Exhibit B, marking each area as A, B, C and D. Area D shows the larger workshop area, appears to be living space, other than classifying it by name as a workshop.

Chairman Mills added that according to the testimony of Ms. LaDuca, the area will be insulated with windows and a heat source. It could be utilized as living space for this homeowner or a future homeowner.

Mr. Drinkard noted that the proposed structure will not affect the neighborhood in a negative way, but because they are removing the dilapidated garage and replacing it with a new one, will provide a positive effect on the neighborhood.

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

MOTION CARRIED

Meeting adjourned at 6:30 p.m. with a motion by Patrick Krey.

Amy Major
Senior Clerk Typist