

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, August 13, 2024

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

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey	Richard McNamara
Gerald Drinkard	Patricia Burkard	

Zoning Board of Appeals members absent:

Chairman Mills recognized Zoning Board of Appeals member Raymond Skaine, who passed away on July 10, 2024. Mr. Skaine was a long-time member of the Zoning Board of Appeals, was very active in the Town of Clarence and with many other town organizations. Mr. Skaine will be missed.

There was a moment of silence on behalf of friend and fellow board member Raymond Skaine.

This Zoning Board of Appeals meeting is held in Mr. Skaine’s honor.

Town Officials present:

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

Other Interested Parties:

James Martin	Alex Neurohr	Daniel Sonnenreich	Sara Cook	Kevin Cook
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Motion by Gerald Drinkard, seconded by Richard McNamara, to **approve** the minutes of the meeting held on July 9, 2024.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Abstain	Patricia Burkard	Aye		

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Switala's Construction
Agricultural Flood Zone

Applicant requests variances:

1. to allow a 77' to 110' principal structure front yard setback located at 8142 Tonawanda Creek Road; and

Town Code Reference:

1. §229-31
2. §229-31

3. §229-31

2. to allow a 124' to 135' principal structure front yard setback located at 8152 Tonawanda Creek Road; and
3. to allow a 160' to 167' principal structure front yard setback located at 8162 Tonawanda Creek Road.

Mr. McNamara recused himself from Appeal No. 1.

DISCUSSION:

Jim Martin was present to represent this item, explaining that they would like to bring the proposed houses in to a straight line, noting that by bringing the front yard setbacks closer to the street, they will not be as close to the neighbors on either side. This would also keep them within the area that has been cleared.

Mr. Drinkard noted that the documents and explanations that the applicant submitted were very detailed and explained their wishes well.

Mr. Drinkard asked what alternatives have been considered in terms of placement of the houses.

Mr. Martin stated that originally, they had a different site plan that had the houses following the road at 150' each. With that plan, the proposed properties would be on top of the existing neighbors, as well as each other.

Mr. Martin explained that if they go in a straight line against the road, it would look nicer from the street view, and would also be more appealing for the neighbors and potential tenants.

Mr. Drinkard stated that after reviewing the paperwork, he agrees with Mr. Martin.

Mr. Drinkard asked Mr. Bleuer if there are any rights to the development on the three lots that supersedes the current law.

Mr. Bleuer explained that the lots are pre-existing, non-conforming lots of record that were originally approved in 2003, and do hold the rights of allowing for duplexes to be developed on them.

Mr. Drinkard asked if the dimensions that were existing in the agreement previously, still apply.

Mr. Bleuer responded yes; they do. There was a subsequent lot line adjustment made after 2003, but everything is still in conformance to the minimum code requirement.

Mr. Drinkard noted that when looking at an aerial view of the properties, Tonawanda Creek follows almost a south – southeast path, then turns back in and Tonawanda Creek Road basically follows the same path.

Mr. Martin stated that when he was on the properties attempting to sort out the property lines, it was all askew because there is no set pattern. Mr. Martin also stated that the neighbors on either side of the properties previously received set back variances as well.

Mr. Drinkard asked Mr. Martin if he has spoken with the neighbors.

Mr. Martin responded yes.

Discussion continued regarding the abnormality of the property lines.

Chairman Mills asked Mr. Martin if the plan is to build duplexes on these lots.

Mr. Martin responded yes.

Chairman Mills asked if they will be rented out or owner occupied.

Mr. Martin explained that one of them already has a tenant planned, and the others will be rented out.

Chairman Mills asked if these proposed duplexes will be similar to the ones located on County Road.

Mr. Martin responded yes; they will be a little smaller to fit the area better.

Referring to the elevation photo that was provided in the variance packet, Chairman Mills asked if the proposed duplexes will be similar to that.

Mr. Martin responded that it will be very similar to the elevations, just a smaller square footage.

Chairman Mills marked the elevations as Exhibit A, noting that the planned duplexes will be similar to the ones shown, only smaller in size.

Mr. Krey echoed Mr. Drinkard's comments noting that due to the fact that the road is angled in that location, he can understand the rationale of requesting the setbacks. The aerial view depicts that the requested setbacks are more in line with the surrounding properties than they would be if they were at the setbacks.

Mrs. Burkard noted that due to the three proposed duplexes looking similar, it would not be aesthetically pleasing to have them not in line with one another.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Patrick Krey, seconded by Gerald Drinkard to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Bleuer noted that there was a range placed in the application due to both the Town of Clarence's and the applicant's estimated measurements. As seen on site, it is very confusing to run a straight line and determining where the right-of-way is, so until the foundations are in and the surveyor is able to survey the pinpoints, this is just a range. Anything approved tonight will be based on what was seen on-site in

terms of where the flags are placed. We will do everything in our power to insure these are complied with, but the line is strung and what exact radius is being taken, there may be a bit of wiggle room.

Mr. Drinkard noted that the three homes and the three adjoining lots line up with each other, and nobody is in anyone else’s backyard. This conforms with the neighbors directly across Tonawanda Creek Road on the other side, so that the line across Tonawanda Creek Road and going along the lot lines on the other side of the road are in conformity with each other.

Gerald Drinkard	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Patricia Burkard	Aye

MOTION CARRIED

Mr. McNamara returned to the dais.

Appeal No. 2

Gabriella Agostinelli & Alex Neurohr
Residential Single-Family

Applicant requests a variance of 16' to allow a 26'7" principal structure rear yard setback located at 9358 Juniper Place.

Town Code Reference:
§229-52(C)

DISCUSSION:

Alex Neurohr was present to represent their request, explaining that they would like to bump out the back wall of their kitchen by 16’, expanding the existing kitchen closer to the rear property line.

Mr. Krey asked Mr. Neurohr to explain why they are going back and not to the side with the expansion.

Mr. Neurohr asked which side.

Mr. Krey stated to the east.

Mr. Neurohr explained that to the east they have an egress window to for the basement, so while that would have been the best option, the egress window eliminates that option.

Mr. Neurohr stated that the other side is not an option because there is a big tree in that portion of the yard that they would prefer to not have to take down.

Mrs. Burkard noted that it is an odd-looking lot, so she understands the situation, and she does not see any other options.

Mrs. Burkard noted that the proposed addition will be the same materials as the house, so it will look like it is part of the original house.

Mrs. Burkard asked about a patio that Mr. Neurohr mentioned.

Mr. Neurohr stated that once this proposed patio is complete, they would like to put a patio in the area closer to the tree, maximizing the larger portion of the lot.

Chairman Mills asked Mr. Neurohr if they have any architectural drawings done yet.

Mr. Neurohr responded no; they do have an architect. It will be a single-story addition with a vaulted ceiling.

Chairman Mills confirmed that there will be vinyl siding and asphalt shingles to match the existing house and roof. There will not be any stone or brick features.

Mr. Neurohr responded that is correct.

Chairman Mills asked if there will be glass windows on all sides.

Mr. Neurohr responded, stating that on the left side with the tree and proposed deck, they plan to have large sliding doors. The right side will have large windows, and the back may or may not have a smaller window towards the top for privacy purposes.

Mr. Drinkard noted that due to the curb of the cul-de-sac in the front of the house, and the depth of the lot, this seems to be a good compromise.

Mr. Drinkard asked Mr. Neurohr is they are planning to replace the existing patio, specifically on the side by the kitchen.

Mr. Neurohr responded yes; as labeled on the plans, the deck that is there currently will become this addition, and the area to the left will be the proposed patio.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Gerald Drinkard, seconded by Patricia Burkard to **approve** Appeal No. 2 as written, with the following condition:

- 1. materials are to match the house

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Patricia Burkard	Aye		

MOTION CARRIED

Appeal No. 3

Daniel Sonnenreich
Residential Single-Family

Town Code Reference:

- 1. §229-55(H)
- 2. §229-55(H)
- 3. §229-55(E)(2)
- 4. §229-55(I)

Applicant requests variances:

- 1. to allow a secondary detached garage (pole barn); and
- 2. of 1,456 sq.ft. to allow a 1,656 sq.ft. detached accessory structure (pole barn); and
- 3. of 1' to allow a 17' tall detached accessory structure (pole barn); and

5. §229-55(F)
4. of 1' to allow a 10' tall overhead garage door; and
5. to allow an accessory structure (pole barn) greater than 400 sq.ft. to use materials different from the principal structure; located at 5565 Old Goodrich Road.

DISCUSSION:

Daniel Sonnenreich was present to represent his request, he is a car collector and hobbyist, and is looking for more storage to consolidate his cars that are currently in storage around town.

Mr. Sonnenreich stated that they will also use the proposed pole barn for storage of seasonal items as well as his boat, which is the reason for the 10' garage door.

Mr. Sonnenreich stated that his wife designed their house, as well as the proposed pole barn to match their house.

Mr. McNamara asked how many cars Mr. Sonnenreich plans to store inside the proposed pole barn.

Mr. Sonnenreich responded 4-5 cars.

Mr. McNamara asked Mr. Sonnenreich if he works on cars.

Mr. Sonnenreich stated that he mainly just collects them.

Mr. McNamara noted that Mr. Sonnenreich has a trailer sitting out on his property, and asked if that will be put away in the proposed pole barn.

Mr. Sonnenreich responded yes.

Mr. Drinkard noted that there is currently an accessory building on Mr. Sonnenreich's property, and asked if that will be replaced.

Mr. Sonnenreich responded yes.

Noting that Mr. Sonnenreich's lot is beautiful, Mr. Drinkard added that this proposed structure will not be out of character for the neighborhood. Mr. Drinkard stated that they are zoned Residential Single-Family, which limits what is allowed.

Mr. Drinkard asked Mr. Sonnenreich if he would be willing to move the proposed structure 10' south, away from the Roll Road boundary line.

Mr. Sonnenreich stated that there may be a possibility to move it 5', noting that when they built the house they applied for and were granted a variance with the Zoning Board of Appeals. Originally they were going to move the house back 25' which would place it even further back than it is now. They did not use the variance, but they did plant the 11 Blue Spruces that the Zoning Board had placed as conditions, to approve the aesthetics for the neighbors.

Mr. Drinkard said that it would help it to blend even more with the surroundings, and move it just a bit more away from the back property lines of the houses on Roll Road.

Mr. Sonnenreich stated that their property line does not end at the paddock fence, but rather continues an additional 10'-15' north and east. The proposed structure would currently be 21' from the property line on the north side, and approximately 18' from the property on the east side.

Mr. Sonnenreich added that his neighbor's garage will hide a good part of the view of the proposed structure from that neighbor behind him.

Mr. Drinkard noted that the color of the proposed structure will not match the house.

Mr. Sonnenreich stated that the colors will match the house, it is black and white, the same as the house.

Mr. Drinkard asked if the cupola is necessary on the top of the proposed barn.

Mr. Sonnenreich responded that they do not necessarily need it; but it looks nice and adds to the aesthetics of the proposed structure.

Mr. Drinkard noted that the cupola extends the height of the proposed structure, making it against code.

Mr. Bleuer stated that the 17' tall calculation does not include the cupola. That would extend the height calculation.

Mr. Krey asked Mr. Sonnenreich if he is aware of other pole barns of comparable size in the neighborhood on Old Goodrich Road.

Mr. Sonnenreich responded yes; he has photos of them. They are much larger, and do not match the houses on their properties.

Chairman Mills submitted Mr. Sonnenreich's 3 photos in to the record, labeled as Exhibit A.

Mrs. Burkard noted that the proposed pole barn will not resemble a pole barn, but look more like a large garage that matches the house.

Mr. Sonnenreich responded that he hopes it is a combination of both. His wife designed it with Stately Builders, and he thinks it is a very nice building. He has additional photos and elevations that he brought with him if the Board would like to see them.

Chairman Mills asked if there were conditions placed that include no business to be operated out of the structure, the existing shed is removed, and the proposed structure is moved 5' to the south, would Mr. Sonnenreich agree to those.

Mr. Sonnenreich asked if it has to be exactly 5' or could it be 4'.

Mr. Drinkard stated that if the condition is placed at 5' then it needs to be 5'. He is thinking of it from the neighbors on Roll Road and how this proposed structure will look from their backyard.

Chairman Mills explained that this variance request is asking the Zoning Board to deviate from the law a fairly substantial amount in terms of what is allowed in the Residential Single-Family zone. He does feel that this is mitigated by the unique condition of Mr. Sonnenreich's lot, the surrounding acreage around it by the neighbor, and the architecture of their home is aesthetically very pleasing.

Chairman Mills stated they while it is a large variance request, the Zoning Board is doing the best that they can to protect the character of the neighborhood and area. Shifting the structure to the south helps to mitigate the view for the neighbors on that side.

Mr. McNamara noted that along the south property line is a row of Blue Spruce, and one of the neighbor's garages is only just over 5' from the property line.

Mr. Sonnenreich stated that he brought an aerial view of the garage and proposed pole barn, the line of blue spruce do a nice job of buffering the view on the side.

Chairman Mills added these in the record as Exhibit B.

Mr. Sonnenreich also has another view of the northwest corner of the proposed pole barn showing the structure from that point of view.

Chairman Mills entered this Exhibit C.

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, with the following conditions:

1. remove the existing shed prior to construction
2. no business to be run from the structure
3. materials are to match the house colors
4. shift the structure 5' to the south

Mr. Sonnenreich has heard, understands, and agrees to the conditions.

ON THE QUESTION:

Mr. Krey noted that this variance request is unique from other variance requests because Old Goodrich Road is unique in that even though it is zoned Residential Single-Family, it resembles a rural / agricultural district. As the applicant pointed out, there are other comparable pole barns on Old Goodrich Road.

Mr. Krey does not believe that granting this variance will be out of character with the neighborhood, and it will fit in with the agricultural look of the street.

Chairman Mills added that while this is Residential Single-Family, the size of the structure and the fact that they are deviating from the law, it is mitigated by the size of the lot, the large size of the adjoining parcels, and there are other pole barns in the area.

Mr. Bleuer stated that this would constitute as one of the two accessory structures that are allowed on the property.

Mr. Bleuer stated that the 5’ shift to the south would represent a 10’ setback off of the fence line.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Patricia Burkard	Aye		

MOTION CARRIED

Appeal No. 4

Kevin & Sara Cook
Residential Single-Family

Applicant requests a variance to allow a detached accessory structure (shed) to be located within the front yard setback located at 8969 Willyoungs Overlook.

Town Code Reference:
§229-55(D)

DISCUSSION:

Kevin and Sara Cook were present to represent their request, stating that they are located in Northwoods, and three different sides of their corner lot have asphalt pavement. They would like to place a shed inside the fence line along their north property line and inside the utility easement. The location of the shed in that area is due to the fact that they have drainage in the rear of their home, towards the bike path. There is a significant elevation change.

Mr. Cook explained that the bike path was not there when the house was built, then when the house was graded, it was graded to the path that was installed after the plans for the house were made. They would like to place the shed away from the aggressive drainage ditch.

Mr. Krey asked if they have explored the option of placing the proposed shed behind the house on a pad.

Mr. Cook responded yes; they had the site checker from the shed company come out to their house, and he determined that it is not possible to place the shed in the rear yard. They do need to have a pad placed for the location that they are requesting, as there is an elevation change in that location as well.

Mr. Cook continued to explain the drainage issues in the rear of their property.

Mr. Krey asked if the fencing around the perimeter will be 4ft.

Mr. Cook responded yes.

Mr. Krey asked what the height of the shed is.

Mr. Cook responded that he is unsure, but that it is under 16’ high.

Mr. Cook stated that they also plan to landscape around the proposed shed.

Mr. Krey asked what kind of landscaping.

Mr. Cook stated that they would like to have a series of trees and plants. On the west side of the proposed shed, they are hoping to plant a larger species of tree such as a Maple or Evergreen, then behind it on that row they hope to plant a series of evergreens as well as some pine shrubs in between.

Mrs. Burkard agreed that trees will need to be planted, and asked if the fence will go up before the proposed shed.

Mr. Cook responded it will be after, so that the shed company is able to bring the proposed shed in and place it.

Mr. McNamara asked for clarification as to where the fence will be placed.

Mr. Cook drew the fence placement on a survey to show the Zoning Board.

Chairman Mills noted the survey with fence placement as Exhibit A.

Chairman Mills noted that basically the entire yard will be fenced in.

Mr. Cook said yes, inside the easement.

Mr. McNamara stated his concern with the proposed shed being far away from the house, and asked if the proposed shed could be located closer to the house and egress wall.

Mr. Cook explained that their intention for that area is to put a patio between the porch that opens to the front, and the sun room that opens to the back.

Mr. McNamara stated that it is not necessary to get it that close to the house, but it is currently close to 100' away from the house, and perhaps moving it up to 30' to 40' would be better.

Mr. McNamara stated that he understands it is a unique lot, but he would feel better if the proposed shed was moved further down the fence line.

Mr. Cook stated that there is the grading and as it comes out the back of the house, the severity of it decreases, and it is least severe where he has placed the proposed shed. At a certain point, there is the same issue that they would have in the rear of the home. He is unsure where the shed company can accommodate placing the shed.

Mr. Bleuer interjected, stating that the allowable front yard setback for a single-family home is 45 ft., this could be a starting point. The dashed line on the survey indicates the 20 ft. wide easement, that would be doubled and 5 ft. added to make the established front yard setback could be if the house was ever accessed Harold's Harvest. 45 ft. would be a standard from Harold's Harvest.

Mr. McNamara noted that the dotted line is 20 ft. so they would need to go to 25 ft.

Mr. Bleuer responded yes.

Discussion continued regarding where the middle point is.

Mr. McNamara stated 50 ft.

Mr. Cook stated that they are in agreement to keeping with the aesthetics of the neighborhood, so 50 ft. would be agreeable.

Mrs. Cook asked what would happen with the shed company if they find the location to be too steep and are unable to place the shed there.

Mr. Bengart stated that they would need to return to the Zoning Board to rediscuss the matter.

Chairman Mills stated that a lot can be accomplished with additional fill and stones.

Mr. Cook explained that they already have issues with drainage, so he would have concerns with fill, due to the way the lot was designed.

Mr. McNamara asked if the floor of the shed will be concrete.

Mr. Cook stated the floor of the shed will be wood on 4'x4' pressure-treated lumber that they intend to place on a stone drainage bed.

Mr. McNamara stated that with the stone there will be plenty of drainage, and the ability to move it further away from Harold's Harvest is good.

Mr. Cook responded yes; as long as they are not too close to the house, that will be ok.

Mr. Drinkard agreed that the shed should be closer to the house, and continued to discuss the benefits to having it further off the property line and closer to the house. The view from the street will be more balanced.

Mr. Drinkard continued to review the layout of the property, stating that moving the shed 20' would be ideal.

Mrs. Burkard agrees with the shed being placed closer to the house.

Chairman Mills stated that he also agrees with Mr. McNamara, it makes more sense from an aesthetics standpoint and to conform with the character of the neighborhood by moving it in closer to the house, perhaps 50' or more, and 10' or more from the south property line.

Mr. Cook asked if it could be 5' from the rear property line. His concern with 10' is that it would be too far in to the lot.

Discussion continued as to where the edge of the Right of Way begins.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

Mr. Krey asked about the evergreens around the proposed shed, which is 10' by 16', with the 10' side facing Harold's Harvest and the 16' side facing the bike path.

Mr. Cook stated that they have not finalized the landscape plan yet because they do not know the placement of the shed, but preliminary plans called for 3 Spruce trees along the south property line facing the bike path.

Mr. Krey asked about the eastern property line along Harold's Harvest.

Mr. Cook stated that they planned on at least 1 deciduous tree, possibly a maple.

Discussion continued regarding which plants and trees to plant and where.

Mr. Bengart presented a depiction of the updated location of the shed approximately 50' in and 5' feet from the south property line. Three trees are shown on the updated drawing.

Chairman Mills stated that they will condition 3 trees, and leave it up to the applicant as to what type of tree, placed as shown in Exhibit A.

Mr. Cook asked when the trees need to be planted, as they had not planned on doing it until the spring.

Mr. Bleuer identified that due to season planting considerations, at least 6 months should be allowed.

Mr. Drinkard asked Mr. Cook if he understands what has been discussed.

Mr. Cook responded yes.

ACTION:

Motion by Patrick Krey, seconded by Gerald Drinkard to **approve** Appeal No. 4 as written, with the following conditions:

1. no business to be conducted from the shed
2. shed to be placed 50' or more setback from the edge of the Right-of-Way of Harold's Harvest
3. 5' minimum south lot setback
4. 3 trees minimum along the rear property line (per exhibit A) within 12 months of the variance being granted

ON THE QUESTION:

Mr. and Mrs. Cook have heard, understands, and agrees to the conditions.

Mr. Bengart stated that it is understood Sturdi-Sheds may not agree to the placement of the shed. Mr. and Mrs. Cook may have the opportunity for a re-hearing, if that is the case and the Zoning Board agrees to it.

Mr. Krey stated that the uniqueness of this lot is why he voted to approve the variance, the bike path was recently opened and due to the grading of the property is why the shed is being placed on the side lot, which due to the corner lot, also constitutes as the front yard.

Mr. Krey stated that with the conditions that have been imposed they have mitigated any concerns, and it will fit nicely on the property and within the character of the neighborhood.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Patricia Burkard	Aye		

MOTION CARRIED

Meeting adjourned at 6:31 p.m. with a motion by Richard McNamara.

MOTION CARRIED

Amy Major
Senior Clerk Typist