

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday, March 9, 2021  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
Patricia Burkard	Richard McNamara
Patrick Krey	Raymond Skaine

Town Officials present:

Director of Community Development Jonathan Bleuer  
Junior Planner Andrew Schaefer  
Supervisor Patrick Casilio  
Deputy Town Attorney Steven Bengart  
Councilman Paul Shear

Motion by Patrick Krey, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on February 9, 2021 as written.

MOTION CARRIED.

**Other interested parties present:**

iPad (5) Joe Schuster	Jane	Dick’s iPad	Kelsey & Larry
Richard Kenyan	Brendan Biddlecom	Wendy Merkle	Al Mauer
KEJ	Peg and Paul Leous (Peg Patterson Leous)		

**Old Business**

**Appeal No. 3** (From November 2020 Meeting)

Brendan and Sarah Biddlecom  
Residential Single Family

Applicant requests a variance to allow chickens on a property less than 5 acres in size at 9550 Maple Street.

Appeal No. 3 is in variance to §229-47

**DISCUSSION:**

Mr. Biddlecom referred to the updated letter from his son's health care provider regarding the emotional support that the animals provide for him.

Mr. Krey asked if they were to approve a variance tonight on the chicken coop, would Mr. Biddlecom be open to the board imposing conditions on that.

Mr. Biddlecom responded that they are willing to work with the town to make everyone comfortable.

Mr. Krey stated that he has some conditions, and he would like to go over them with Mr. Biddlecom, to get his feedback on them.

- Only hens allowed, no roosters
- All hens are to have their wings clipped
- The chicken coop must be on the furthest point away from the property line, at least 20 ft. away from any window or door, other than the owner's dwelling
- The coop and runways have enclosed areas so that the chickens cannot escape
- The coop be reasonably screened from sight by neighbors
- No more than four chickens (they currently have four chickens) Another thing to consider is whether the approval would be for the four chickens that they currently own, and when those chickens are no longer living, they would not replace them with new chickens.
- Require the coop and runway to be kept clean and sanitary at all times.
- No dirt or feces kept on the ground or runway, nor allow any noxious odors to emanate from the property.
- Feed is to be stored in metal containers, or some other container that is rodent proof.
- Allow the town to inspect the chicken coop quarterly upon no less than three days written notice.
- On perhaps an annual basis, provide a letter similar to the one already provided, from a licensed medical professional stating the need for the therapy animals still exists. The format similar to that which has recently been submitted.

These are conditions that if Mr. Krey was going to make a motion to approve, are what he would impose, and asked if Mr. Biddlecom would be willing to agree to them. Mr. Biddlecom replied that yes, they all sound reasonable.

Mr. Skaine agreed with Mr. Krey, stating that the list he provided was quite clear and concise. That under those circumstances, if they abide by those conditions, it could work out well for both them, as well for the Town of Clarence.

Mr. Mills stated that a letter was received from a medical practitioner, further detailing some of the questions that the board had previously asked, and this letter will be entered in to the record as Exhibit A, and filed appropriately.

Mr. Bengart advised that the letter can be entered in to the record, but because of HIPPA regulations, it is not to be released to the public under any circumstances, short of a court order.

Mr. Michnik asked Mr. Krey, referring to his condition of the chicken coop being at least 20 ft. away from everything – if that is 20 ft. away from property lines and buildings. Mr. Krey replied that no, it is

20 ft. away from any window or door, other than the owner's dwelling. Mr. Michnik asked if it would be able to be next to a garage, to which Mr. Krey replied yes, the owner's garage.

Mr. Michnik asked Mr. Krey if he would like to change or add anything to the conditions he has stated, Mr. Krey stated that personally no, though he is open to other suggestions from board members.

Mr. Michnik asked Mr. Krey about his mention of an annual review from a licensed medical professional, does he want to specify what type of doctor. Mr. Krey responded that no, he would state proof to be provided on an annual basis to the Planning and Zoning Department from a licensed medical professional that there is still a need for the therapy animals. The proof should be in a similar format to the recent letter that was provided.

Mr. Michnik asked what the letter should be dated, to which Mr. Krey stated that he would ask the town what they would prefer, based on calendar year, or annually from when /if it is approved.

Mr. Bleuer recommends that it be based on the approval date, one year from the date of approval.

Mr. Michnik asked Mr. Krey about his condition regarding visits, and how many visits a year would he recommend. Mr. Krey reiterated that he stated quarterly visits, with no less than three days written notice.

Mr. Bengart stated that he does not want to put an onus on the town, at the town's option. Mr. Bengart stated that the whole idea behind notice or no notice is up to this board as well.

Mr. Krey stated that the way he sees it, if there are neighbor complaints then an inspection will be necessary, but if it's kept clean, and there are no neighbor complaints, then there may not be a need for the town to go every quarter, but he would still like for the town to have that option.

Mr. Bengart stated that his suggestion, if the board were to approve this, is that a scheduled inspection be within three days' notice, but if there was a complaint, or something else were to come up, he doesn't feel that it should necessarily require notice. The town should have the ability to do an inspection based on a complaint.

Mr. Michnik asked Mr. Krey whether the chickens are allowed to run free range in the yard, or if they have to always be inside the pen or fenced in area, and how big of a pen is he requiring them to be in. Mr. Krey stated that the condition he mentioned is that the coop and runways have enclosed areas so that the chickens cannot escape. Mr. Krey asked Mr. Biddlecom what the current dimensions of the coop that they currently have are.

Mr. Biddlecom responded that there are two features to this, and that the wing clipping condition solves that problem, and the whole yard itself is fenced. He did some research and found that it is much easier than he originally thought to clip the wings.

Mr. Biddlecom stated that he had a separate area around the coop that was netted, to add extra protection and to keep the chickens from flying out, but that would be rectified if they will be clipping the chicken's wings.

Mr. Krey noted that his condition was to have the coop and runway enclosed so that the chickens can't escape, and what he is hearing Mr. Biddlecom say is that his entire yard is enclosed. Mr. Krey asked Mr.

Biddlecom if the runway has netting around it, Mr. Biddlecom responded that yes it did, up until this point. Due to all of the snow and ice, it needs to be re-established. Mr. Krey noted that when he made that condition his intent was to keep the chickens from wandering out of the yard. Mr. Michnik asked how often the wings need to be clipped, and also he feels the 20 ft. condition was to keep the chickens from running around the whole yard, and in a controlled area. Mr. Michnik stated that he feels the condition is to have the coop, but then within the coop is an area that is part of the coop, but needs to be 20 ft. away from everything. You're dealing with a yard that is fenced, but the sidewalk is only 2 ft. away from the fence. Mr. Michnik wants to be sure all points are covered, because sometimes our intentions are good, but we need to have all points covered and both the applicant as well as the town understands all of the conditions.

Mr. Skaine referred to number 4 of Mr. Krey's conditions, the pen has to be screened from the neighbors, so that they cannot see the chickens. He asked Mr. Biddlecom if that will be a problem for him, because that is a big issue for Mr. Skaine, that people will not be able to see the chickens from the sidewalk, and be distracted by them. Mr. Biddlecom responded that the yard is fenced with a picket fence, not a privacy fence. Especially if he repositions the coop, it will be difficult to see the chickens, someone would need to try hard to view them. He hasn't had any complaints from neighbors, and as he's previously stated, he has neighbors that bring their young children and grandchildren by specifically to watch the chickens. Mr. Biddlecom said that he will do everything he can to keep them within the confines. He knows that the recommendations are from an animal health perspective, to give each chicken a 10 ft. area of their own. Mr. Skaine stated that he is more concerned with making sure it is screened so that anyone walking by will not see the chickens. That is his big issue, as it is the negative to the town as well as to the people who live in that area. Mr. Biddlecom replied that his is a corner lot, and if someone wants to desperately look in to their backyard, they're going to see that as well as anything else that they want to see. Mr. Skaine stated that the main walkway past Mr. Biddlecom's house is to the east, and that is the one that he feels is most attractive that people will be looking in, and is the area that should be screened.

Mr. Mills interjected, asking if perhaps some natural buffer such as Arborvitaes or similar taller shrubbery would be sufficient to what Mr. Skaine is referring to. Mr. Michnik stated that Mr. Skaine needs to be specific as to how high the shrubs should be, to which Mr. Skaine responded that he wants the screening to be dark screening, and as high as the current fence is now. Elm Street is 4 ft. high, and to take that in to consideration when making their recommendations.

Mr. Skaine stated that a 4 ft. screen inside the picket fence would work. Mr. Michnik asked if Mr. Skaine is looking for fencing around the entire area, Mr. Skaine responded only on the Elm Street side, because that is where most of the people are walking by. Mr. Biddlecom stated that it is well covered with foliage on both the north and west sides of the property, to which Mr. Michnik asked what kind of foliage there is. Mr. Biddlecom stated both Arborvitae and Walnut trees, then pine trees along the back edge of the fence. Mr. Skaine stated that the only side he is concerned with is the east side because that's where the sidewalk is, and it is where people walk.

Mr. Michnik stated that he is asking whether Mr. Skaine would like it to look uniformed throughout the yard, or at the point where the north and east fences meet, that someone can walk up the neighbor's driveway and look in. Mr. Michnik is asking these questions before they get too far in to the discussion. Mr. Skaine stated that his addendum to the motion would be to add on the picket fence along the east side 4 ft. high privacy screening on the inside of the picket fence.

Mr. Bengart interjected, stating that to be clear, no motion has been made as of yet. Mr. Krey brought up some issues that he felt if it was brought up for a motion with those conditions, he wanted to know where Mr. Biddlecom stood on them, whether they were acceptable to him. Mr. Bengart noted that there is multiple kinds of screening, and the board could require screening around the coop or runway, it doesn't have to be around the whole property. The point of screening is to screen the coop and chicken run.

Mr. Biddlecom interjected, stating that he feels that would solve Mr. Skaine's issues that he's perfectly fine putting privacy screening up because right now what they currently have is deer fencing around the coop itself, that's open so yes someone could see that. Considering the coop is a much smaller area, and away from the sidewalk, it would be more useful to put the privacy screening around the coop, than the fence itself. Screening around the entire yard would not prohibit anyone from looking over the fence, but screening the coop itself keeps people from actually seeing the chickens.

Mr. Bengart stated that the screenery doesn't need to be screen per say, but rather shrubbery, or a natural screen.

Mr. Michnik asked Mr. Biddlecom how big his backyard is, Mr. Biddlecom responded that he thinks the total dimensions are in the 50x160 range. Mr. Michnik then stated that Mr. Biddlecom can go 20 ft. away from each side as well as the back, with no problem at all. Mr. Biddlecom stated that would essentially be putting the chicken coop in the middle of the backyard, if it is to be 20 ft. from the property line. Mr. Krey stated that his 20 ft. condition was in reference to the neighbor's windows, not Mr. Biddlecom's. Mr. Michnik stated he is saying 20 ft. from each property line, and Mr. Biddlecom replied that due to the dimensions of his lot, that would not be possible. Mr. Michnik noted that Mr. Biddlecome had stated that his yard was 60 ft., Mr. Biddlecom pointed out that if Mr. Michnik is asking for 20 ft. from each property line that would not be possible to do, it would essentially be the coop sitting in the middle of the backyard, with no run area.

Mr. Michnik stated that is why he's talking about this, because he wants Mr. Biddlecom to understand what it is that they are talking about. Much discussion continued.

Mr. Krey stated that the reason he brought the conditions up early on, was so that the board and applicant didn't spend too much time debating them at the time of a motion, he wanted to make sure everyone understood before any motions were made. He believes the motion should read that the chicken coop should be kept at least 20 ft. away from any window or door on a neighbor's dwelling.

Mr. Bleuer stated that the width of the yard is 50 ft. not 60 ft. Mr. Krey stated that if they were to make it so that the chicken coop was in the middle of the backyard, it would make it more visible, not less. Keeping it where it currently is, is better than pushing it further in to the yard.

Mr. Bengart stated that if it was moved to behind the garage, but Mr. Biddlecom noted that there is an overhang there, and the configuration would make it difficult to place it there.

Mr. Bengart noted that it is going to be important for them to determine where they want the coop to go, and not vaguely say 20 ft. here or there. He would like to specify where it would be, so that if it gets approved and inspections are done, there is a clear cut place where the coop is to be. Mr. Biddlecom needs to be involved as well, so that he can understand and agree to where the board decides it needs to go, should it be approved.

Mr. Michnik feels that it may be a good idea to table this appeal, so that they can further discuss what they are looking for as far as location of the coop, then bring Mr. Biddlecom back once they have established that as a board.

Mr. Bengart stated that the motion will need to be specific as far as what they are doing, and to agree with it. Then to move on and make sure Mr. Biddlecom is comfortable with whatever conditions may be imposed, if they were to approve it.

Mr. Bleuer stated from an inspection standpoint, if you are not satisfied with the current location, then you would need to state a specific location. Otherwise you could let it remain in its current configuration. We have those images, and that is how it would have to remain.

### **ACTION:**

Motion by Raymond Skaine to table appeal No. 3 under Old Business and perhaps have a board site meeting, so that they can be there together to look at the situation as a whole. Mr. Bengart pointed out that if they do that, they are creating a meeting, which means that they would need to notify the public. Mr. Krey agreed, stating any gathering of the board members with the applicant would need to be treated as a meeting.

Motion by Raymond Skaine, second by Ryan Mills to table appeal No. 3 under Old Business until next month. The board members will go in two groups of two, then one, to meet with Mr. Biddlecom at his property to review the location and screening.

### **ON THE QUESTION:**

Mr. Bengart asked to what end is the meeting being tabled for.

Mr. Mills stated that the reason for the additional tabling has to do with the location and placement of the chicken coop, along with the preventative screening measures that will be taken. Further investigation regarding those in conjunction with the neighboring parcels, the different points of views from the neighbors as well as those walking nearby. Based on the testimony they've heard tonight, additional investigation is needed regarding at least those two factors.

Mr. Bengart stated that to clarify, are each of the board members going out individually to meet with Mr. Biddlecom, or making sure that there is not a majority of the board members on site at the same time. He is not sure how this will be any different than coming back to the next meeting and having the same discussion.

Mr. Michnik asked Mr. Bengart if three board members are able to go to Mr. Biddlecom's at one time to view the issues in question. Mr. Bengart responded no, because that would make a majority of the board, since the board consists of five members and one alternate.

Much discussion continued regarding the grouping for a site visit.

Mr. Shear stated that it is Mr. Michnik's responsibility as the Chairman to dictate which board members goes with whom.

Mr. Michnik stated that they need to find out from Mr. Biddlecom when it is convenient for him to have the board members come out, perhaps a few days that would work for him. Mr. Shear stated that they should discuss that with Mr. Biddlecom at a later date after he has had a chance to look at his schedule.

Mr. Michnik told Mr. Biddlecom that if this gets tabled, they are going to ask him to give some available dates to be able to come meet with him, and discuss some of the things that they have discussed tonight. Mr. Biddlecom agreed to that.

Mr. Bengart noted that going out to do further investigation at the Biddlecom's does not insure the request will be approved or denied, it is simply to gather further information and gain a greater understanding, to help make an informative decision.

Mr. Krey stated that of the conditions that he had suggested, the two biggest concerns were the location of the chicken coop as well as the potential screening or shrubbery that may be used. This appeal is being tabled based on further review of those items. The other conditions do not need any further clarifications, just the two issues discussed. Mr. Michnik asked Mr. Krey if he would please share his list of conditions that he has, so that the board members know what to look for when they go to the site. Mr. Krey will email them to Mr. Bleuer, who will then send them to the ZBA board members. Mr. Krey asked Mr. Bengart if he should read the list in to the record or send it as an email as a list to refer to. Mr. Bengart responded a list for the board members to refer to is sufficient until a new action is taken.

Patrick Krey	Aye	Richard McNamara	Aye	Raymond Skaine	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

#### MOTION CARRIED

Mr. Michnik requested Mr. Biddlecom notify the Planning office with dates and times that he is available. Mr. Bengart noted that ten choices would be easier to work with for scheduling.

#### Appeal No. 5 (From the September 2020 meeting)

\*Please note, modifications have been made from the previous appeal.

Larry and Wendy Merkle  
Residential Single Family

Applicant requests a variance of:

- 1) 345 sq. ft. to allow a 555 sq. ft. attached accessory structure (garage) addition,
- 2) 5' to allow a 27' front yard setback for an addition (front porch) to the principle structure;  
located at 6122 Railroad Street.

Appeal No. 5 is in variance to:

- 1) §229-55 (D)
- 2) §229-52 (A) (1) \*Established front yard setback 32 ft.

**DISCUSSION:**

Mr. Michnik recused himself from this request, Mrs. Burkhardt will step in from the alternate position. Mr. Mills will step up as Chair for this appeal. Mr. Bengart stated that Mr. Michnik just needs to mute himself, so that he cannot participate.

Mr. Shear stated that all recusal forms need to go to the Town Clerk. Mr. Bleuer responded that all forms filled out are forwarded to the Town Clerk when appropriate.

Wendy Merkle explained that they purchased the house at 6122 Railroad Street on their daughter's behalf, and they would like to build a garage for her art studio, as she is an artist. She travels the country, and the vehicle that she uses for that is filled with her artwork, which they would like to be able to park in a garage to protect both the vehicle as well as the artwork it holds.

The current garage holds Mrs. Merkle's daughter's daily vehicle as well as her "fun toy". The previous owner had a shed that they used which became unusable, so has since been removed. They understand why there was a need for a shed, as there is no room in the current garage for any storage.

When they came to the Zoning Board of Appeals originally to request this garage, it didn't have the type of curb appeal that they were looking for, so the request was tabled. Since then, they have updated their plans, and supplied the board with the new drawings.

Mr. Mills stated that they have two new 3-D elevation renderings, marked Exhibits A & B.

Mrs. Merkle stated that without a variance, they are able to add to the depth of the current garage, but the neighbors do not want them to do that, because they would need to put a side entrance on, they would have to remove a row of Arbor Vitae which provide privacy and greenspace with the adjoining lot. While it would allow them to park the van inside, it would still require them to get a shed in order to store all of the other outside items in.

To update the aesthetics of the drawing, they moved the garage back, rather than bringing it forward. It was previously suggested that they repeat the pattern of the garage doors, but they decided they didn't want to do that, as it just made the garage look longer. They only need a single door for the proposed garage, but they would like a double door for the middle garage, for aesthetic purposes, drawing attention away from the garages.

Additionally, they would like to put a front porch on the property, not just for aesthetics, but because they enjoy sitting outside, their neighborhood is a highly sociable, walking neighborhood, and sitting outside is ideal. They don't want a huge porch, just something they can put a couple of chairs on, and decorate, giving the house greater curb appeal.

Kelsey Merkle spoke, stating that she is an artist and a graphic designer, she wants her home to look nice. One of the points that she recalls was mentioned at the last meeting for this request, it was suggested perhaps putting a peak in on the roof, to break up the original design of the garages all lined up. Now that the updated plan has the additional garage pushed back, it breaks up the roof line. They decided to put a peak on the porch that they are requesting to add, would frame in the front door and bring attention to the front of the house, away from the garage.



Mrs. Merkle added that she has discussed this with every single neighbor, and they have all signed off. The neighbor that they share a lot line with, who would be most affected by this, is in favor of this. Mr. Mills clarified that when looking at their home, it would be the neighbor to the right. Mrs. Merkle stated that that neighbor has stated she would rather they get the variance, so that the Arborvitaes do not need to be removed, as well as build on the greenspace which is currently there.

Mr. McNamara stated that he likes this new design, much more than the previous one. He had made comments about the length of the old design, he loves the setback, the front porch, and the roof, it is very well done. In his opinion, it looks great.

Mr. Skaine agreed with Mr. McNamara, he likes the way the updated design looks. It fits in to the area that she lives quite well, the porch is a great addition, as Clarence is a walking community, it's enjoyable to have a front porch.

Mrs. Burkhardt also agrees, the new design looks wonderful. She would like to know about the driveway, is the new addition going to have a driveway out to the road, or is it going to curve in to the current one.

Mrs. Merkle replied that the driveway to the house is very large, so there is no need to make it bigger, as the footprint is already there. Perhaps at a later date making the driveway a little smaller, as it is not necessary being the size that it is now.

Mrs. Burkhardt asked what the height of the garage doors are, Mrs. Merkle replied they are both 8 ft.

Mr. Krey also agreed, it is a big improvement from the previous plans that had been brought to the board. He is surprised nothing needs to be done with the driveway in order to get the vehicle in to the garage, because looking at the drawing, it appears it would be difficult to get it in.

Kelsey noted that they would have to add a little on, just to taper it in to the garage, but it's nothing major. Mrs. Merkle stated that it is probably only a couple of inches, if that and it is because the previous owners had a shed there, where they had built the driveway right up to the shed.

Mr. Krey stated that looking at the pictures, it appears it will be a tight turn, but he is satisfied with the applicant's decision. Mrs. Merkle stated that the previous owner's had installed a concrete sidewalk, border type area which they will even out to make it all level.

Mr. Mills referred to the garage doors, looking at Exhibits A and B, they appear to be designer garage doors. He can't tell if they are all panels, or if they will have glass on them also. Mrs. Merkle stated that they have not selected them yet, but that Kelsey would like to mimic the windows that are on the front of the house, so that the design is cohesive. Mr. Mills feels it is important that the garage doors have some glass on them, and are designer garage doors due to the number of them versus the overall façade of the home.

Overall he also agrees that they have done a nice job, mitigating the size with some design elements.

The meeting was opened for public comments:

Richard Kenyan (a party on virtually) asked to have the finished design shown again, as he missed it the first time. He agreed that it looks nice.

**ACTION:**

Motion by Raymond Skaine, second by Richard McNamara to **approve** Appeal No. 5 under Old Business as written, adding the condition;

- Designer garage doors include windows and / or glass to match that of the house.

**ON THE QUESTION:**

Mr. Mills stated that the applicant did a great job with some of the design concerns that the board had during the initial meeting. She mitigated the size of the garage by setting it back, by using designer garage doors, and adding a porch with a peak on the roof of the porch. All of these things helped conform the project to the character of the neighborhood.

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

MOTION CARRIED

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

Richard Gehring  
Residential Single Family

Applicant requests a variance of 10' to allow a 35' front yard setback for an addition to the principle structure located at 4515 Greenbriar.

Appeal No. 1 is in variance to §229-52 (A) (1)

Mr. McNamara identified that he recently joined the Historical Preservation Committee, their first meeting was last night which is where he met Mr. Gehring for the very first time, as he is also a member of that committee. Mr. Bengart asked whether he was a friend of Mr. Gehring's, to which Mr. McNamara stated no, he had never met him up until last night on Zoom for the Historical Preservation Committee meeting. Mr. Bengart asked if Mr. McNamara has had any financial interactions with Mr. Gehring, to which Mr. McNamara stated no. Mr. Bengart asked Mr. McNamara if being on the committee with Mr. Gehring will in any way affect his ability to make an informed decision on this appeal, Mr. McNamara stated no. Mr. Bengart responded that he doesn't see any issues, Mr. McNamara is ok to proceed.

**DISCUSSION:**

Mr. Michnik asked Mr. Bleuer if there was a letter received regarding this variance request, Mr. Bleuer replied that supplemental documentation was received from the applicant himself, but no correspondence from any concerned or interested neighbors.

Mr. Gehring stated that he and his wife have lived at this property since 1993, and typical of a ranch house, the bedrooms are of a smaller size, and they'd like to add on to the bedrooms on the north end of

the house, as shown in the exhibit that he submitted with the variance packet. It is 24 ft. on the north end of the house. He has discussed it with his neighbors, and they don't have any concerns with his potential plans. Architecturally he plans to make it look very similar to their home, also depicted in the plans that were submitted. There is a photo of the current existing elevation, as well as what is proposed. It will be coming out 12 ft. then coming straight out, and replicating what is there currently.

Mr. Michnik asked if there are any Neighbor Notifications on record with the Planning and Zoning office, Mr. Bleuer responded that due to the Covid situation and the unknown meeting schedule, the town is still notifying all adjacent neighbors. That being said, the applicants do have the ability to submit forms, and in this case we do have both. Mr. Gehring noted that they submitted three forms that were signed by their neighbors.

Mr. Krey has no questions at this time, he feels the applicant did a good job explaining his request. He did ask how it will blend with the rest of the house once it's complete. Mr. Gehring stated that the same materials will be used, the same slope of the roof will be used to come out on that peak, and the only thing he plans to change is a slight introduction of the roof on the front elevation turning in to the vertical siding in the peak area. This will break up the vertical separation of the building.

There are two windows shown on the existing building, on the left / north side of the elevation, he would like to do similar on the right side, to keep it even in that bedroom, as shown on the plan for the proposed west elevation on their application.

Mr. McNamara noted that there is a difference between the survey and the plans that they submitted, asking if they built an addition on where the closet of bedroom # 1 was. Mr. Gehring replied yes, that was done in approximately 2000, he submitted the plans and received a permit, so it is probably not shown in the original survey, they did not get a new survey after having this addition put on.

Mr. Skaine stated that he thinks it's a nice addition, and he likes the plan to have the west elevation match the two windows, that will be a nice addition if it is done.

He appreciates the letter that the board received today, indicating all the photos that show it will not impact the neighborhood at all.

Mr. Mills inquired about going to the front rather than back, and what made them decide on coming forward rather than going to the back of the house. Mr. Gehring replied that the two children bedrooms are on the front of the house, and as shown on the application and exhibit that they submitted, how they are divided.

Mr. Mills noted that is marked as Exhibit A, which is the floor plan, elevation, and photo elevation. Mr. Gehring responded that they put an addition on the master bedroom, on to the back. With the two front bedrooms at the front of the house, it didn't leave them with any other direction to go besides forward. Mr. Mills asked if they thought about going up, to which Mr. Gehring responded no, they did not, not on a ranch house of this style. It is not consistent with the neighborhood, and it would look unproportioned. Mr. Gehring is an architect, so he was sensitive to what he was doing as far as the massing of the structure.

Mr. Michnik asked Mr. Gehring if they have a basement beneath their home, Mr. Gehring responded that as shown in Exhibit A, they have a basement only up through the living space, stopping where the

bedrooms are. There is a crawl space in the existing bedroom area, as well as a crawl space under the master bedroom, and he intends to include a crawl space under the bedroom additions as well.

Mr. Michnik asked if there's any particular reason why only a crawl space, Mr. Gehring stated that it's not accessible to other areas. Currently only bedroom #3 and the master closet area only has a crawl space, so he would need to crawl in underneath that space to get to it. His basement is quite large, from the line between the bedroom and the living room all the way to the north, it's a considerably large basement already.

Mr. Michnik asked if Mr. Gehring knows why they put in crawl spaces originally, to which Mr. Gehring replied that he does not know, but he would guess perhaps because they had plenty of bedrooms and he knows that the house to the north of him has the same identical footprint and they didn't have a basement under that area.

When Mr. Gehring excavated and dug the basement for the master bedroom addition, he went down the required 4 ft., and it's just slightly lower than the existing footings for where the crawl space was. Mr. Gehring went down an additional foot for frost protection, and he did not run in to any rock at that time. He doesn't foresee hitting any rock, but he has only proposed going down the 4 ft. below grade.

Mr. Michnik asked Mr. Gehring if he runs in to rock, how he plans to put his footers in. Mr. Gehring responded that if that was the case, he would go to a structural engineer. He is licensed as an architect, so anything more he would go to a structural engineer to have him assist Mr. Gehring with how the foundation wall could be pinned in to the rock, and what combination of anchors and how the new foundation wall would have to set.

Mr. Gehring stated that for his backyard addition, he did go down the 4 ft. and did not hit any rock it was good soil, and he did it by hand, because he was in the vicinity of the septic tank. Both the Department of Health and the Town of Clarence advised him that he could go to where he was relative to the septic tank. He dug it by hand and did not hit any rock in that area.

Mr. Michnik asked about the materials, and will they match what is already existing on the house. Mr. Gehring stated that he has researched all of the materials, the roofing material is still manufactured so he can still use that. The siding color is no longer manufactured in that exact same color, but they will use as close as possible. He will probably take some of the existing siding off of the west elevation, and put it on the most apparent place, which would probably be back on the front of the house, so that there is no difference in material. He got a sample of it, and it is very close, you couldn't tell the difference. The windows will all be the same, type and size of the Andersen windows and the vertical siding is a very common siding, which will be up on the peak.

Mr. Skaine asked when the master bedroom was split in to two bedrooms, Mr. Gehring stated right around 2000. Mr. Skaine asked if that's when the master bedroom in to the back, to which Mr. Gehring referred to the back line of the house, in the living room on Exhibit A, that living room. You can see a portion of the east wall of the living room, to the right of the photograph and take that wall straight across, that is where the back of the house was. Mr. Gehring went out 12 ft., then removed the structure and the roof in that section, which was all designed and permitted on his building permit that he received at that time.

The meeting was then opened for public comments:

Al Mauer, who resides just to the south of Mr. Gehring stated that he has no problems, and encourages the addition. As far as the digging, his septic is in the front lawn which he had replaced approximately a year and a half ago, and they were able to dig down 7-8 feet before hitting any rock.

### **ACTION:**

Motion by Ryan Mills, second by Daniel Michnik to **approve** appeal No. 1 as written.

### **ON THE QUESTION:**

Mr. Mills pointed out that based on the design and floor plan of this house, the fact that the applicant already had a rear addition where his master bedroom suite is, that coming off the front seems to be the most practical and realistic addition. Based on the character and design of the neighborhood, it will have a minimal effect and fit in with the aesthetics of the area.

Raymond Skaine	Aye	Patrick Krey	Aye	Richard McNamara	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

MOTION CARRIED

### **Appeal No. 2**

Joseph Schuster  
Residential Single Family

Applicant requests a variance of:

- 1) 688 sq. ft. to allow a 960 sq. ft. attached accessory structure (garage) addition,
- 2) 4' to allow a 36' front yard setback fronting Shimerville Road,
- 3) 25' to allow a 20' front yard setback fronting Hurlburt Lane, located at 5079 Shimerville Road.

Appeal No. 2 is in variance to:

- 1) §229-55 (D)
- 2) §229-52 (A) (1) \*Established front yard setback 40'
- 3) §229-52 (A) (1) \*Established front yard setback 45'

### **DISCUSSION:**

The applicant, Joseph Schuster was present virtually, and addressed the board. He explained that he would like to build an additional structure, 960 sq. ft., pole barn structure, asphalt shingles roof, and the front of it would be consistent with the current construction of the existing dwelling. Mr. Schuster noted that the purpose of the addition would be to expand his storage area. He has multiple vehicles, including an antique collector car, he would like to use it for storage. When his son is home from the service his vehicle is also on the premises, and the driveway gets congested.

Mr. Skaine asked Mr. Schuster if he owns the company Roy's, or if he is an employee, Mr. Schuster responded that he works for them. Mr. Skaine asked what business Mr. Schuster does out of his home, Mr. Schuster stated that working for Roy's is his primary source of income, his only job. Mr. Skaine asked Mr. Schuster if he plans to keep his work vehicle in the proposed structure, which Mr. Schuster replied that he would like to store that in the garage, as there are chemicals and materials that he uses on a daily basis stored on the vehicle which freeze. With the weather that we've had the last couple of weeks, many of the tools freeze and don't operate the way that they are supposed to, and the battery power tools die quickly.

Mr. Skaine asked what the dimensions are for the structure, which Mr. Schuster responded 24 ft. by 40 ft., which he hopes to be able to get 4 vehicles inside.

Mr. Krey asked whether Mr. Schuster had his home built, or if he purchased it, Mr. Schuster responded that he bought the house in 2005 and it has been completely redone, it is basically a new house. Mr. Krey noted that Mr. Schuster did a great job on the house, it looks like a new build.

Mr. Krey's major concern with the proposed structure is the street view, as the entire structure will look 2/3 garage, as the garage is higher than the house itself. Mr. Krey understands the motivation for the garage, and for wanting to get the truck out of the driveway, which is definitely a benefit, but he would like to look at ways to mitigate the view of it from the street.

Mr. Krey added that the fact that it's a corner lot, unfortunately then becomes the issue that it's almost like another front lot on that side. The setback Mr. Schuster is seeking is a substantial size, to move it in 25 ft. Mr. Krey understands why he's doing it, and it will be built to look identical to the house. Mr. Schuster stated that anything exposed from the front view would be consistent with the existing stone work. If approved, it would be an asphalt shingle roof, also consistent with the existing structure.

Mr. Krey asked if it needs to be the requested height in order to fit Mr. Schuster's work vehicle, Mr. Schuster replied that the garage door needs to be 10 ft. high in order to get his work vehicle inside, so that is why he needs the height of that building.

Mr. McNamara stated that he doesn't see that it fits the neighborhood, between the pole barn, the height is much higher than the original house, and architecturally it doesn't flow. He'd have to remove the big pine tree, and on the corner lot. Mr. McNamara understands the need for garage space, but perhaps removing the breezeway, and bringing the height down to tie it more in to the house. Mr. McNamara stated that he feels this size of a structure that fits the surroundings of that further out in Clarence, not in the neighborhood and location that is being requested. Mr. Schuster thanked Mr. McNamara for his honesty and stated he does understand his concerns, and is able to address those. He added the breezeway based on research he did and some of the plans previously brought to the board, and tying it in to the existing structure with a breezeway was a common suggestion that has come up in the past, so he incorporated that.

As far as the neighborhood, it is a very unique neighborhood, if you look throughout the neighborhood, there is an array of different style homes from ranch, doubles, log homes, and down Hurlburt there are two very unique houses side by side, designed by an architect. It's a very unique neighborhood, and Mr. Schuster doesn't think it would be as obvious and stick out as much, based on the uniqueness of the neighborhood already.

The sketch Mr. Schuster drew, he is planning to keep the existing pine tree there, for the very reason as to help disguise the obtrusiveness of the addition.

Mr. McNamara recommends contacting an architect to get some plans drawn up to help make the addition look like part of the house. As with past applicants, they were told to confer and advise with an architect, draw up new plans to help with the layout and flow of the plans. In Mr. McNamara's opinion right now, it does not fit in with the neighborhood.

Mr. Mills echoed the comments of both Mr. McNamara and Mr. Krey, his house is beautiful, he has done a great job with it, but the concern is the integration of this with the existing structure. The size of it, as it's designed, the elements of it currently as it's depicted in Exhibit A, Mr. Mills feels it does not fit with the character of the neighborhood in its current state. Mr. Mills stated that with some architect's involvement it can be blended and integrated better with the character of the neighborhood, without having an adverse effect.

Mr. Mills addressed Mr. Schuster, stating that if he'd like to, he can ask the board to table his request, while he consults with a design professional, then return with some alternate possibilities. Mr. Mills asked Mr. Schuster if that sounds like a possibility he might consider.

Mr. Schuster stated that he did consult an architect, and while it is not an architectural drawing, but the architect did give him some pointers. It was Mr. Schuster's understanding of this appeal was that the board did not expect the applicant to make that type of an investment, without knowing definitively whether it would be approved, which is why Mr. Schuster presented the sketches that he did.

Mr. Mills stated that there is no requirement for presentation to this board that the applicant retain or consult an architect, it is simply something they encourage. It is Mr. Schuster's right to have the board either table, approve, or deny the appeal request, therefore they can certainly vote on it tonight if that is Mr. Schuster's request.

Mr. Michnik asked Mr. Schuster about the materials that he plans to use for the addition, will they all match the house directly, or will they not match. Mr. Michnik asked for some history on the materials, such as the siding, etc.

Mr. Schuster responded that the siding would be metal, and as per the drawings, would have the black wanes coating to match the roof and some of the trim. The door on the existing structure will match the garage door, and instead of a tin roof, it will be an asphalt coated shingle roof. From the front of the structure it would be the same materials, to blend in. The Hurlburt side of the building would still be the tin, and he did propose to include landscaping on that side, it currently has a large Spruce tree there.

The only visual or indication that it would be a pole barn would be from the back.

Mr. Michnik asked Mr. Schuster if he was going to remove the big Spruce tree, Mr. Schuster responded no, it will remain there, it does not need to be removed to fit the structure in there.

Mr. Michnik asked Mr. Schuster if he considered locating this addition anywhere else on his property, Mr. Schuster replied that yes, he did but there is no option, as the drainage creek through a lack of maintenance by the town and the county, floods quite often, so any structure he built down there would be risking his belongings as well as any equipment stored in there. Therefore, that is not a feasible option.

Mr. Michnik asked Mr. Schuster what alternative plans he has, in case the board denies the request, to which Mr. Schuster responded his alternative plans would be to move. He would take Mr. McNamara's suggestion and exercise other options.

Mr. Michnik stated that they received some letters, Mr. Mills will highlight the concerns and relevant details that have been gathered, and the letters themselves are in the project file as well.

Mr. Mills stated that the email sent to him, he is unable to tell who it is from. Peg and Paul Leous were on the call virtually, and spoke that the email was sent from them. There was discussion regarding the Leous's speaking their concerns or having their email read in to the record. Mr. Bengart responded that they can put their correspondence in to the file and record, and give the Leous's a chance to speak their concerns. Their correspondence was sent to the entire board for their information and review.

Mrs. Leous noted that both she and her husband Paul, who was also present virtually are here to discuss Mr. Schuster's application. They live there, Mr. Schuster is their neighbor. If anyone is familiar with the log cabin and the property across from Brookfield Country Club which was originally part of the Women's Nine, Mr. Schuster's property was part of that as well. If you understand the topography of it, you will understand that Mr. Schuster's house is approximately 12-15 ft. higher than all of the houses in the neighborhood, because Gott Creek runs through it. In regards to Gott Creek, the reason there is flooding, is because Brookfield Country Club has consistently been allowed to plug the creek or allow the creek to flood. They have the creek management, they have polluted the creek, but Mrs. Leous stated she won't get in to that right now.

Mr. Michnik interrupted to remind Mrs. Leous that she is addressing the board in regards to the appeal at hand, and Mr. Schuster's variance request.

Mrs. Leous stated that they own 700 ft. of property that runs along Hurlburt from Brookfield. All of the houses along Hurlburt back up to their property, except for the last few, getting close to Meadowbrook. As she previously stated, this was originally part of the Women's Nine. There is eight acres total, all owned by four members on a private lane and if you know the property, you know what she is referring to, as well as the topography of where Mr. Schuster's house sits.

Mrs. Leous stated that they have owned their house since 1978, as well as the log cabin also located on that road. They have no close neighbors across the street because of the acreage, the only thing across the street is Brookfield's maintenance barn, otherwise it's all open space.

Where Mr. Schuster is planning on putting his barn, the MacVitties live next door to the Leous's and according to Mrs. Leous, they don't have any objection either, because they are all 15 ft. lower and do not see the top of Mr. Schuster's property from their houses. There is no obstruction, and no way will it affect the neighborhood.

When Mr. Schuster purchased his house it was run down, and he has put time and energy in to creating a house that has increased property values in the neighborhood. Mrs. Leous stated that Mr. Schuster would not do anything that would detract from property values. As she has stated, they live there, and they have no problem with that project. It is a raised property, and Mrs. Leous does not see how Mr. Schuster can possibly put something down below without destroying their property value.



Mr. Schuster has been an excellent neighbor, and has always been there for everybody, helping with whatever is needed, and to lose Mr. Schuster would be detrimental to the neighborhood. Mrs. Leous stated that they have been there for almost 50 years, they welcome Mr. Schuster and his barn. She cannot understand the objections, if you have been to the property, why anyone would think it would detract from the neighborhood, because it's up so high, you can't see it and nobody on Hurlburt appears to have an issue either. Mrs. Leous said she gets tired of seeing his Roy's truck sitting in the driveway, so she cannot understand one reason why a property that you can't see from anywhere else in the neighborhood, you would have a concern about Mr. Schuster putting up a barn. She and her husband support Joe's request and they hope that if you lived in their neighborhood, you would understand that they all support Mr. Schuster.

Mr. Bleuer stated that since the meeting began, he has received an email from Peg and Paul Leous, so the emails that Mr. Mills have are not the ones that Mrs. Leous was referring to.

Mr. Mills noted that he has an additional email sent March 8, 2021, the sender did not provide addresses or names, it is an anonymous email sent to the Town of Clarence, indicating that there are an increasing number of commercial vehicles in the area. Their bold graphics provide colorful outdoor advertising, and the plumbing truck located at 5079 Shimerville as well as a video trailer and van regularly parked at 8905 Hurlburt are two good examples. The concern is eliminating the front yard requirement for the corner property at Shimerville in order to provide parking and storage space for commercial vehicles. This could be seen to signal that the zoning board does not intend to protect the residential character of the neighborhood that remains intact. Additionally, they are concerned about long term residences for neighborhood aesthetics as well as the impact on property values and quality of life as we increasingly seem to be commercializing this residential area.

Another email also sent anonymously on March 9, 2021 indicating that the sender has resided in the neighborhood for several decades yet in recent years there have been an increasing number of commercial vehicles and construction equipment, and several properties have large vans and trailers advertising the business to which they belong. The neighborhood is full of equipment and trucks, which the author of the email went on to identify. They then indicate that if the zoning board grants the variance, it would turn their Hurlburt front yard in to a parking storage space for commercial vehicles, and their concern for their residential neighborhood becoming a parking lot for commercial businesses. Also if the structure is widened how many cars on Hurlburt turning south on to Shimerville can safely see oncoming traffic. They continue to indicate that local businesses should be renting facilities to store their equipment. In closing, they hope that the board will preserve the residential status of the neighborhood, safeguard property values and character.

Mr. Krey agreed with Mr. McNamara's suggestion of tabling the request so that the applicant can get an architect involved. Mr. Krey asked Mr. Schuster if he's considered expanding the existing garage and moving that back. Other options to have it blend with the current structure more. He understands comments that were just made in regards to neighboring properties that are set back further and that the proposed building would not bother them, but the street view issue is a concern.

If it were to be approved, Mr. Krey would like to see that an effort is made to blend it more with the home and maybe expand upon the current existing garage, or some way blend it in better, versus just having a pole barn on the side like that.

Mr. Skaine asked about the elevation from Mr. Schuster's property down to Hurlburt, and what his plan is for that. Mr. Schuster stated that is why he was looking to bring the construction of the building forward, so that he did not have to deal with the drop in that elevation. The building would be on the plane of Shimerville, not where it dips down to Hurlburt. Mr. Skaine noted that the location of the stakes identified the proposed building being very close to the road. Mr. Schuster stated that is not necessarily true, that the pitch of the backyard starts at that point, so it would be a low corner which would have to be backfilled with stone to bring it even with the front. This is why Mr. Schuster made the cut off where it is.

Mr. Schuster responded to Mr. Krey's concern regarding incorporating the proposed building in more with the existing garage. He stated that he did address that with the architect that helped him design his current drawings, and he said that the way the roof line and the pitch would need to be for the size of that roof to handle the snow load, it would be more intrusive than the structure that is currently designed. Also, Mr. Schuster completely re-did the current roof in 2018, and he would hate to have to cut so much of the roof off in order to incorporate the new building.

His original application included sketches to incorporate that in to the existing structure, and it would not work.

Mr. Michnik stated that he feels that the proposed building would look like a barn. The roof line with the shingles is a great option, he feels it is not a practical request for that particular spot. If there was some other way to incorporate it to better match the house. Mr. Michnik feels that it is too massive for that corner, both sides of the street are very unique and it would not fit the general character of the neighborhood. He did drive through the neighborhood, and did not see anything that would change his mind.

#### **ACTION:**

Mr. McNamara asked Mr. Schuster if he would like the board to table the request so that he is able to consult with an architect and return with other options, or would he like for the board to vote on the request. Mr. Schuster noted that there are multiple variance requests waiting to be heard, and would prefer to not take up any more time. Mr. McNamara stated that it is not a waste of theirs or Mr. Schuster's time, they are simply trying to help him to make the project work with the neighborhood.

Motion by Richard McNamara second by Ryan Mills to deny appeal No. 2 under New Business.

#### **ON THE QUESTION:**

Mr. Mills stated that state law requires the board to look at five factors when evaluating an area variance;

- whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by granting the variance. Mr. Mills believes based on the testimony that they have heard as well as the exhibits that the size of the requested building will create an undesirable change in the character of the neighborhood.
- whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but not require a variance, the answer to that is yes, as the vehicle can be parked elsewhere.

- whether the requested area variance is substantial, and reviewing the request they were asked to look at a 688 sq. ft. variance as one prong, a 4 ft. variance as for another, and a 25 ft. for the third prong of the request. These are substantial in nature.
- whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood, which Mr. Mills does believe based on the testimony that they have heard, due to the size of the structure as well as the nearby properties, it will create an adverse impact.
- whether the difficulty was self-created, which the home was purchased without the garage, therefore it was self-created.

Ryan Mills	Aye	Raymond Skaine	Aye	Patrick Krey	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

#### MOTION CARRIED

Much discussion continued regarding future meetings and the number of requests currently on file to be heard, as well as virtual versus in-person meetings.

After much discussion, it was decided that in order to catch up on the back log of applications that Covid has caused, the next meeting on April 13, 2021 will start earlier, and more requests will be heard. The meeting will begin at 5:00 or 5:30 p.m. with a two hour time slot, then the next time slot will begin at 7:00 or 7:30 p.m.

Mr. Mills made a motion to close the meeting at 9:22pm, second by Patricia Burkhardt.

#### MOTION CARRIED.

Amy Major  
Senior Clerk Typist