

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
August 10, 2021

The Zoom meeting link may always be found on the published agenda, which is accessible on the Town of Clarence’s website

Chairman Daniel Michnik called the meeting to order at 5:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Raymond Skaine
Patricia Burkard	Richard McNamara
Patrick Krey	

Zoning Board of Appeals members absent: Vice-Chairman Ryan Mills

Town Officials present:

Director of Community Development Jonathan Bleuer
Deputy Town Attorney Steven Bengart

Other interested parties present:

Amanda Mason	John Kasinski	Donald Powell	Jason Doktor
Amy Rockwell	Michael Rockwell	John Brylinski	John Rummel

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** the minutes of the meeting held on July 13, 2021.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Mr. Michnik reminded the applicants that the board may approve, deny, or table their request.

Appeal No. 1

Martin Griffith / Bank on Buffalo
Traditional Neighborhood District

Applicant requests a variance of 37’ to allow frontage of 83’ on Clarence Center Road located at 9490 Clarence Center Road.

Appeal No. 1 is in variance to:

§229-61

*Corner lots shall be no less than 120’ on each street

DISCUSSION:

Present to represent Bank on Buffalo is Andrew Schopp, attorney for the bank, who further explained that they are seeking to adjust the lot lines of 9490 and 9470 Clarence Center Road.

Mr. Schopp reviewed the diagrams and photos, which are on file in the Planning and Zoning Department.

Mr. Skaine asked if they intend to sell the property, which has led to the lot line adjustment. Mr. Schopp responded that the bank is intending to sell the property in question, as it is not in the business of being a landlord and managing real estate. They felt it was in the best interest of all parties to maintain as close as possible the character of Clarence Center, while still doing business as a bank, separate from the property.

Mr. Skaine confirmed that the Bank is not changing anything, they would like it to be a legitimate building lot in and of itself, Mr. Schopp confirmed yes.

Mrs. Burkard asked if they will be removing the current parking lot as shown in Exhibit B, Mr. Schopp confirmed that yes, the parking lot will become the new proposed house lot, and they will also install a fence to separate the parcels.

Mr. Schopp explained that their plan is to extend the parking lot all the way back to the bank lot.

Mr. Krey noted that they are basically subdividing the current lot, with the bank remaining in its current location.

Michael Anderson from Bank on Buffalo stated that the house, which is currently on the lot, is being **

Mr. Krey asked to clarify, the name on the application is Martin Griffith, but he is not present. Mr. Anderson stated that he reports to Martin Griffith.

Mr. Bleuer noted in regards to the statement that the lot was being sub-divided, as it currently legally exists as two parcels, which would make this simply a lot line adjustment. The existing house is on its own parcel, therefore it would be a reconfiguration of those two lots.

Mr. Krey asked why the minimum was set at 120', if it was set by area or by code. Mr. Bleuer responded that he is not familiar with the history of that 120' requirement, which was originally set for a corner lot.

Mr. Krey asked the applicant if he knows what the average frontage in the surrounding area is, Mr. Schopp responded that he does not. They referred to the Town of Clarence zoning dimensions, which is what they used when calculating the different frontages and what would be considered acceptable.

Mr. Schopp further explained that there is currently access to the Bank from Railroad Street, however after they adjust the lot lines, they will erect a fence along the house portion which will remove the ingress and egress to the bank's parking lot on Railroad Street, and they intend to tear that up. If they are granted the variance they will have an ingress – egress installed and pave the back portion of the bank lot, to replace the ingress – egress that they lost to the house lot.

Mr. McNamara asked whether the Town Engineering Department has been consulted with regarding the back parking area, with the curb cut, and ingress-egress.

Mr. Bleuer stated that other than the removal of parking, any expansion or addition of parking would require board review, including the Building and Engineering Departments. Mr. Bleuer stated that to his understanding, the applicant wants to be sure that the lot can be adjusted, then propose the reconfiguration of the parking for the bank lot.

Mr. McNamara stated that the board could put a restriction that if the project is not approved by the Planning Board, then this variance is null and void. Mr. Bleuer confirmed yes, that is an option.

Mr. Michnik asked if the Board were to put a condition on stating that they have to install a fence from Clarence Center Road to the back of the property, then east to Railroad Street, would the applicant consider agreeing to that condition. Mr. Schopp responded that they are already intending to fence in the entire area, in order to separate the two lots.

Discussion continued regarding the sewer system for the properties.

Mrs. Burkard asked what kind of fence the applicant plans to install, Mr. Anderson responded that they do not have that information at this time. Mr. McNamara commented that if they plan to run a fence along the street, they will be limited to 4 ft., which Mr. Bleuer confirmed that in the front yard setback they would be limited to 4 ft. in height.

Mr. Bengart reminded the Board that if this variance is approved, there will be other boards that the applicant will need to go to for some of their additional requests. Mr. Bleuer clarified, stating that a proposed commercial fence would be reviewed and approved by the Landscape Review Committee. The Zoning Board would have the ability to place a condition requiring a fence, but advised against adding specifics.

Mr. Krey asked what the applicant's intentions are if the variance is not granted. Mr. Schopp responded that if they are not granted the variance, then unfortunately they may need to use the property in a different manner, which may lead them to no longer being able to preserve the single family residence on that property. Mr. Schopp added that he feels that would be a terrible loss to lose such an intricate piece of architecture in Clarence Center. It would leave them with very few options other than to remove it.

Mr. Bengart stated that removing the house on the property would require going to a different board, because the building is more than 50 years old.

In regards to Public Participation, the following residents spoke:

- Michael and Amy Rockwell of 6015 Goodrich Rd:

The bank wraps around their property, they are very concerned about the variances specifically the additional parking lot and driveway that are planned.

They had previously met with representatives from Bank of Akron before it was sold to Bank on Buffalo, which at that time, Mr. Rockwell stated that they were interested in purchasing that parcel in order to assure it was kept as greenspace. Since the sale of the bank, communication has become one way, and Mr. Rockwell stated that they have not had the ability to speak with representatives of the new bank.

Mr. Rockwell continued to state his additional concerns.

Mrs. Rockwell stated that they take issue with the request because it will change the character of the neighborhood and be a detriment to nearby properties.

Mrs. Rockwell also stated their concern for the lack of communication that occurs with the Bank on Buffalo representatives.

Mr. Rockwell stated concerns with infrastructure as well.

Mr. Michnik noted that if this variance moves forward, it would then go to the Planning Board, and if there are concerns and issues, that is the time to bring them forward.

Mr. Bleuer stated that the purpose of tonight's meeting for this item is simply to move a parcel line, and whether that is allowed or not allowed. Any disturbance to the site of any kind would require further review, tonight is specifically to move a parcel line.

Mrs. Burkard asked if they were to move forward and approve the request, if anything additional that is done with the property, whether it is parking lot, trees, fences, etc. would require further review. Mr. Bleuer reiterated that further review would be required.

Mr. Krey asked if the bank already owns both parcels, which was confirmed that they do. Mr. Krey then stated that because they own both parcels, regardless of what is decided tonight, any of the changes they make, they are able to do so if permitted and subject to any additional reviews by the town, because they do own the property.

Mr. Krey noted that in regards to the neighbor's concerns and what is in front of the Zoning Board tonight, they are deciding on whether or not to move a parcel line and make a smaller lot, which is not the lot that borders the neighbor's property. Their concerns as Mr. Krey sees it, are not impacted because the bank will still own the parcel which neighbors their property line.

Mr. McNamara asked if the line is moved, and the egress to Railroad Street is lost, will that mean they will only have one entrance and one exit for the bank. Mr. Bleuer responded that their proposal would still maintain two access points, one to Goodrich Road and one to Clarence Center Road. If they were to not seek any additional approvals prior to selling of the lot, they would chance losing access to Railroad Street because they have no approvals in place for an additional access.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Bengart asked whether the Mr. Skaine or Mr. Michnik would like to add any conditions to the motion, they do not.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Aye
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Richard McNamara Nay Daniel Michnik Aye

MOTION CARRIED

Appeal No. 2

Charles Kelkenberg
Agricultural-Rural Residential

Applicant requests a variance to allow a 280' front yard setback for the construction of a single family home located at 7025 Goodrich Road.

Appeal No. 2 is in variance to:

§229-41 (A)

*Average front yard setback of 150'

DISCUSSION:

Charles Kelkenberg was present and further explained that though there are a couple of reasons for the request, the primary reason is for safety, while the other is for privacy. The safety concern aspect is to get some more distance from Goodrich Road, which is becoming a busier thoroughfare.

Mr. Kelkenberg explained that setting the house back further will give it more privacy, seclusion, and more of a country atmosphere.

Mr. Kelkenberg stated that the neighbors that they were able to talk to regarding this request, were accepting of it, and looking forward to having a new neighbor.

Mr. Krey asked if they had considered bringing it up more and not having such a large setback, as it is almost double what the neighboring homes are. Mr. Kelkenberg stated that it is a safety concern and issue for the applicant and homeowner, she has several grandchildren as well, and would like to be further back from the road.

Mr. Krey stated that the concern is that the applicant's home will basically be in the backyard of the neighboring property because it would be setback so far. If there's a way to mitigate that and bring the home up a bit, it would be easier to accept.

Mr. Kelkenberg responded that there is approximately 150 ft. of buffer to the neighboring property, and quite a bit of wooded area behind the properties. He stated that they would rather explore some vegetation or other way to mitigate that concern. Additionally, there is roughly 300 ft. to the property to the south, which leaves plenty of room to do landscaping there as well.

Mrs. Burkard asked which neighbors Mr. Kelkenberg spoke with, he responded that he addressed the neighbor to the north, as well as AJ's to the south.

Mrs. Burkard asked Mr. Kelkenberg what size the house is that he is building, he responded that the house is proposed to be 4500 sq. ft. Mr. Kelkenberg stated that he believes his client will have vegetation and plantings around the house and would consider planting a line of trees to help with privacy, if the board requires it.

Mr. Skaine stated that he is not in favor of the request, because he has walked the lot where the house is planned to go, and the site line infringes on the neighbor's property and privacy.

Chairman Michnik asked Mr. Kelkenberg if his client has future plans of selling any of the property off, Mr. Kelkenberg responded no, and he does not believe the parcel can be split again, there are 22 acres. Mr. Michnik asked if they plan on putting in an Open Development in the future, Mr. Kelkenberg responded no. He believes his client owns the property.

Mr. Bengart asked if there is anything on file which authorizes Mr. Kelkenberg to speak on behalf of the owner, Mr. Bleuer responded no, not to his knowledge.

Mr. Bengart asked Mr. Kelkenberg who owns the lot now, Mr. Kelkenberg responded that he believes that it is under contract with their client, but that Mr. Kelkenberg's company is the current owner. Mr. Bengart stated that because Mr. Kelkenberg is the legal owner, he has the authority to speak and restrict the land for the future, before it is sold. Mr. Bengart stated that it may be a requirement that the new owner acknowledge that issue.

Mr. Michnik asked to clarify with Mr. Kelkenberg, that his company currently owns this property, Mr. Kelkenberg confirmed that, but added that it is under contract with the owner building the house, so the house and the property will go together. Mr. Bengart informed Mr. Kelkenberg that because they currently own the land, he can put any restrictions on it that he chooses to at this point. Mr. Bengart stated that his concern would be that the new buyer is aware of any restrictions that are put in place.

Mr. Bengart stated that if this board is not comfortable going forward with this request at this point, or has concerns and may want to deny the request, perhaps the applicant may want to bring the presumed buyer to the meeting so that they can hear any conditions that are put in place.

Mrs. Burkard asked if they were to approve this request, would the house be able to be built anywhere on the lot, within that setback, Mr. Bengart responded that the board can put whatever condition they want to.

Mr. McNamara stated that driving down Goodrich Road, he has noticed that there are houses set that distance back if not further, and mitigated with a berm and some plantings and perhaps moving the house to the south a bit, may help with the concerns of the neighbor's privacy.

Mr. Skaine asked Mr. Kelkenberg why they are choosing that specific placement for the houses, Mr. Kelkenberg noted it is more conducive for the drainage and water lines. Mr. Skaine asked if the proposed house was moved 100 ft. south, it would mitigate some of the issues. Mr. Kelkenberg responded that is something which would need to be discussed with his client that is purchasing the home and property.

Mr. Skaine asked whether Mr. Kelkenberg would have any objection to this request being tabled so that the board was able to discuss it with the potential home and property owner. Mr. Kelkenberg stated that he would also like to know if this item gets tabled, what the restrictions would potentially be. He appreciates the feedback which he is able to take back to his client.

Mr. Michnik noted that once they apply conditions to the variance, it stays with the property.

ACTION:

Motion by Richard McNamara, seconded by Raymond Skaine to **table** Appeal No. 2.

ON THE QUESTION:

The concerns of the board include but are not limited to, and may be changed or updated the next time this request comes the Zoning Board of Appeals;

1. Move the home more to the south
2. Buffer to the north consisting of trees, berm, etc.
3. Closer to the street
4. Re-staked and also include dimensions that can be included in a motion
5. No future splits or Open Development
6. When re-staking, leave original stakes so that the board can compare

In regards to Public Participation, no one spoke.

Mrs. Burkard noted that Mr. Kelkenberg had spoken with the neighbor to the north, but not the next house, though they are very close together. Mr. Kelkenberg stated that he will reach out to them as well.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Appeal No. 3

Brian R. McArthur
Agricultural-Rural Residential

Applicant requests a variance of 10’ to allow a 5’ side yard setback for the construction of an attached deck located at 10458 Clarence Center Road.

Appeal No. 3 is in variance to:
§229-41(B) (2)

DISCUSSION:

Brian McArthur was present and further explained his request, stating that they would like to expand the deck that is there currently, which is in poor condition. Mr. McArthur explained that the grade of his back yard slopes, therefore they have no space to put a fire pit or porch. Building the deck larger would give them the space to have an area where his family can hang out together.

In order to have sufficient space, they would like to build a 20x30 ft. deck, and since the Town of Clarence Code only allows up to 20x20 ft., he is asking for an additional 10 ft.

The adjoining neighbor’s house sits over 200 ft. back from his property, with ample amount of vegetation to provide a buffer.

Mrs. Burkard asked what the deck will look like, Mr. McArthur responded that it will look just like the deck that is there now, except larger.

Mrs. Burkard noted that it is a second story deck, and inquired what will be below it. Mr. McArthur responded nothing will be below it, only grass.

Mr. Skaine asked Mr. McArthur if there is an opening on the second story on to the deck, Mr. McArthur responded that there is a sliding door to exit on to the deck.

Mr. Krey asked Mr. McArthur if the deck will match the house, Mr. McArthur replied that they will stain the pressure treated wood a color to match.

Mr. Krey asked about the proximity to the neighboring property line, Mr. McArthur explained that the two stakes are on the property line, with the other stake being 5 ft. from the point.

Mr. Bleuer noted that the aerial that shows the parcel line is a result of the Planning Office printing it out, and unfortunately the parcel lines are not accurate.

Mr. Michnik asked if the board placed a condition that the bottom portion was not to be enclosed in any way and used in storage, would Mr. McArthur agree to that, Mr. McArthur responded that they had no plan to do that, so he does not have an issue with it.

In regards to Public Participation, the following resident spoke:

- John Kruzinski adjacent property owner at 10468 Clarence Center Road

Stated that this is not a first floor deck, 14 ft. off of the ground and will be visually imposing from all angles.

Nearly the same footprint as the size of the house, making it a substantial addition to the property.

Safety is a concern from a liability standpoint. If the variance is approved, if someone were to fall off the deck and due to the close proximity to his property, they could land on his property, which he would be held accountable for should there be any physical harm to the individual.

Also concerned about the possibility of property damage or injury to him or his children if something were to fall off of the deck.

The opportunity is there due to the amount of trees nearby, that a branch or tree could fall from his property, and without the buffer that the code requires, causing damage to the property and forcing Mr. Kruzinski to submit an insurance claim.

Mr. Kruzinski stated that all of this would unfairly and unnecessarily increase his risk of an insurance claim, causing his insurance to increase.

Also a concern is property value as well as privacy, which they currently have and value. Adding this second story deck would decrease the property value and privacy to his home.

Mr. McArthur also stated that uncertainty is also a concern, as there are no drawings or diagrams to indicate what the structure will look like.

Mr. Kruzinski continued to list his concerns.

Mr. Michnik asked Mr. Kruzinski about his statement regarding the property value of his home decreasing due to the proposed deck, and whether he has any facts or figures to support that statement.

Mr. Kruzinski replied that he does not, but it is a rural type setting and most decks extend off the back of a home, not the side.

Mr. McArthur noted that his home sits a little over 200 ft. back from the road.

Regarding Mr. Kruzinski's comments regarding insurance, Mr. Michnik advised him to consult with his insurance agent concerning branches or trees that fall on his property. There is a lot of vegetation between the two homes

Discussion continued regarding Mr. Kruzinski's concerns.

Mrs. Burkard asked what the dimensions of the new deck are if the variance is approved, Mr. McArthur responded that it is proposed to be 20 ft. x 30 ft, and 20 ft. x 20 ft. if it is not approved, it is only 10 additional feet.

Mr. McArthur pointed out that he is not building a deck, the current deck was there when he purchased the house.

Mr. McNamara asked Mr. McArthur if he would be willing to reduce the size of the deck and variance request, Mr. McArthur responded that he had not considered that, but it would depend on what this board's decision is. They would like to build the deck with more room, which adverts him from going to the back of the property, put up a fence, cut down the vegetation, and do what else is necessary to get a flat area.

Mr. McArthur stated that although he has spoken with an architect, he has not had any plans drawn up yet, because of the variance request.

ACTION:

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

1. No roof above or enclosure below to be installed on the deck.

ON THE QUESTION:

Mr. McArthur stated that he understands and agrees to this condition.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Nay
Richard MacNamara	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Appeal No. 4

Jason Doktor
Residential Single Family

Applicant requests a variance of 2' to allow a 6' tall fence to be located in the front yard setback of 5186 Willowbrook Drive.

Appeal No. 4 is in variance to:

§101-3(C) (2)

*A corner lot shall be considered to have two front yards from the public road right-of-way to the closest point of the principal structure.

DISCUSSION:

Mr. Doktor was present to further explain his request, stating that the current configuration of his property would cause a complete dissect of his side yard if he was to install a fence within the code. He has an active family which includes a puppy, the additional 2 ft. variance would allow them to maximize the use of his yard.

Additionally, there are ill placed power lines along the west side of his property, so they make all attempts to avoid those lines. They use as much of the rest of the property that they can, avoiding the area with the power lines.

He feels that they have come up with the best way to utilize their property as well as not ruining any of the characteristics of the neighborhood. Additionally, it is far enough away from the right-of-way to not have any impact with that, and the sight lines are clear so that it will not affect anyone entering or exiting their driveway.

Mr. Skaine noted that when he was at the property to do his site inspection, he noted that from the street when you put up a 6 ft. fence, it is really an 8 ft. to 9 ft. fence, he feels it is excessive to put up a 6 ft. fence.

Mr. Doktor responded to Mr. Skaine, referring back to the power lines that he identified on the west side of the property, which pushes them to use the remaining areas of his property. While a 4 ft. fence would offer his yard the closure, a 6 ft. tall fence provides privacy as well, primarily when they are in the front part of the yard.

Mr. Krey asked Mr. Doktor about his reference to the two other homes in his neighborhood that have 6 ft. fences, which Mr. Doktor reviewed to the best of his ability.

Mrs. Burkard asked Mr. Doktor if it's just for his family use, which Mr. Doktor confirmed.

In regards to Public Participation, the following resident spoke:

- John Rummell of 5175 Willowbrook Dr. West stated that he is completely in favor of this variance request, noting that his kids play in Mr. Doktor's yard all of the time, and for multiple reasons, including privacy from cars, as well enhancing the character of the neighborhood, he is in complete favor.

ACTION:

Motion by Patrick Krey, seconded by Patricia Burkard to **approve** Appeal No. 4 with the following condition:

1. A white vinyl fence is installed

ON THE QUESTION:

Mr. Krey noted that Mr. Michnik was the one who requested a white vinyl fence, Mr. Michnik confirmed.

Patricia Burkard	Aye	Richard McNamara	Aye	Raymond Skaine	Nay
Patrick Krey	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Appeal No. 5

Thomas Bluhm
Residential Single Family

Applicant requests a variance of 136 sq. ft. to allow a 336 sq. ft. detached accessory structure (shed) located at 4776 Boncrest Drive West.

Appeal No. 5 is in variance to:
§229-55 (H)

DISCUSSION:

Mr. Bluhm was present and further explained his request, stating that he is retired, and his goal is to construct a woodworking workshop for personal use, as well as storage for lawn equipment but primarily a place to do his woodworking.

He intends to replace the existing shed with the proposed shed, with a concrete floor, and the outside material will match that of the house.

The current size of Mr. Bluhm's home is approximately 1800 sq. ft., his lawn is approximately 2.5 acres.

Mr. Krey asked Mr. Bluhm if they imposed the condition that the shed is only used for personal use would he agree to that, Mr. Bluhm agreed.

Mr. Bluhm also agreed to match the siding of the home if it was placed as a condition.

In terms of landscaping, Mr. Bluhm stated that he hadn't considered any landscaping due to the surrounding area of the location of the proposed shed.

Mrs. Burkard commended Mr. Bluhm on the great job that they did on his home. She also confirmed with Mr. Bleuer that neighbor notifications were on file.

Mr. McNamara also commented on how the home looks. Additionally, he noted that there is a large pine tree to the northeast, and asked if Mr. Bluhm plans to remove it. Mr. Bluhm noted that he is hoping to not have to, but if he needs to, the plan is to replace it.

Mr. Skaine complimented Mr. Bluhm on speaking well on the project, providing a good visualization.

Mr. Michnik asked what the total height of the proposed building is, Mr. Bluhm responded that it is 14ft. 6 in.

Mr. Krey asked Mr. Bluhm if they were to make it a condition that if the existing pine tree were to be removed, that it would be replaced with a new tree, would he agree to that, Mr. Bluhm confirmed he would do that.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** Appeal No. 5 with the following conditions:

1. Remove the existing shed
2. Save pine tree to the northeast if possible, if the applicant cannot save it, then replace with a new 6' evergreen if possible.
3. No commercial or retail activity to be done from the property
4. Match the siding of the house

Richard McNamara	Aye	Patricia Burkard	Aye	Raymond Skaine	Aye
Daniel Michnik	Aye				

MOTION CARRIED

Meeting **adjourned** at 6:40 p.m. motion by Patrick Krey, seconded by Daniel Michnik

Amy Major
Senior Clerk Typist