

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
September 14, 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
Patricia Burkard

Raymond Skaine
Richard McNamara

Vice-Chairman Ryan Mills
Patrick Krey

Zoning Board of Appeals members absent:

Town Officials present:

Director of Community Development Jonathan Bleuer
Deputy Town Attorney Steven Bengart

Other interested parties present:

Nicholas Cole Mark & Vanessa Morgado Douglas Curella Charles Kelkenberg

Motion by Raymond Skaine, seconded by Patrick Krey to **approve** the minutes of the meeting held on August 10, 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.

Old Business

Appeal No. 2 (from the August, 2021 meeting)

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.

Town Code Reference;
§229-41 (A)

*Average front yard setback of 150'

DISCUSSION:

Charles Kelkenberg was present to further explain his request, noting that the last time he met with the board he received some feedback which he applied to his project. He is hopeful that the changes that were made will satisfy the board.

The first change made is to include a 150 ft. berm on the north side of the property which extends from the back of the proposed house to the back of the neighbor's house. This berm would provide a barrier for their backyard and will consist of Pine or Spruce or similar, which would be full year round. There will be two rows, with each tree planted 5-10 ft. apart, a total of approximately 30 trees.

The other change that they made based off of suggestions from this board is the placement of the proposed house 50 ft. to the south. This change will still allow for the addition of a stable or pasture in the future.

With those two changes, he is hopeful that it will satisfy the board. The neighbors that Mr. Kelkenberg spoke with are happy with the proposed plans as well.

Mr. McNamara confirmed that the berm is running from the rear of the neighbor next door's house to the rear of the proposed house, Mr. Kelkenberg confirmed yes.

Two rows of pines approximately 15 ft. apart, which Mr. Kelkenberg confirmed, stating they would also ask for landscape input for the spacing as well.

Mr. McNamara noted that he likes the adjustment of moving the house further south, and asked if the 280 ft. setback would still be needed. Mr. Kelkenberg responded yes.

Mr. Skaine asked how tall the berm would be, Mr. Kelkenberg responded that if you are standing in the location of the proposed house, looking at the berm, a good portion of the berm is up on a hill. He doesn't have exact numbers, but it will be big enough to support the trees yet still be able to mow around it. Mr. Skaine asked how high the berm will be, Mr. Kelkenberg stated that it will be approximately 5 ft. and in the back, 1-2 ft.

Mr. Skaine stated that he would like to see it the same height all the way across. Mr. Kelkenberg responded that with 5 ft. and the way that the land is laid out, that could get fairly big in the front of the berm. It could end up looking worse than if they were to go with the land features which already exist. Mr. Skaine continued to explain that he would like the berm to be the same size all the way across. Mr. Kelkenberg stated he will do the best that he can.

Mr. Krey commented in regards to the berm, if the board made it a condition, is that something that Mr. Kelkenberg would be willing to agree to.

Mr. Bengart stated that the more information that can be supplied to the Building Department the better, and they will use that when issuing the Certificate of Occupancy.

Mr. McNamara stated that staggering the trees approximately 15-18 ft. apart is optimal, as they will need the space to adequately grow, and not too close to each other in the future.

Mr. Krey stated that if he makes a motion to approve the request, he has some conditions he would like to add as well. Mr. Krey stated that he will put some thought in to the conditions, and come back to it.

Mr. Mills asked whether the total parcel size is still 22.04 acres, Mr. Kelkenberg responded yes, with the anticipated size of the proposed home to be an approximately 4500 sq. ft., two story house with a three-car attached garage, and potentially a barn in the future. Mr. Mills asked where the barn would be located, Mr. Kelkenberg responded that it would probably be placed closer to the house, for convenience. It would be located on the south side of the property, and shielded by the trees that will be planted.

Mr. Mills asked about the berm, confirming that Mr. Kelkenberg has no issues with the berm and two rows of staggered trees, but distance apart and height need to be confirmed.

Mr. McNamara stated that evergreens should be placed no less than 15 ft. apart, in order to give them adequate space to grow.

Mr. McNamara also pointed out that in regards to berms, the higher they are, the wider they will grow, which will ultimately make it more difficult to care for. The top of the berm should be somewhat flat, so that trees can be planted.

Further discussion continued regarding the pace that trees grow vs. the size of the proposed berm.

Mr. Michnik asked about the berm, stating he thinks the berm should be made to coincide with the land, so that it fits in properly.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Ryan Mills, seconded by Dan Michnik to **approve** Appeal No. 2 under Old Business with the following conditions:

1. Applicant agrees to plant evergreen trees along the north end of the property, beginning at the rear foundation line of the home to the north, extending them to the rear foundation line of the proposed home to be built.
2. The trees are to be placed in two rows, staggered 15 ft. apart upon a berm not to exceed 5 ft. in height, and uniformed across the span of the berm.
3. Trees are to be maintained and replaced as needed by the applicant / owner of the property.

Discussion then ensued regarding the location of the proposed house on the property, with Mr. Mills amending his motion to include:

4. The proposed home is to be placed at least 200 ft. off of the northern property line.

ON THE QUESTION:

Mr. Bengart asked the applicant if he has heard, understands, and agrees to these conditions. Mr. Kelkenberg responded yes.

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

Mr. Mills stated that the subject parcel is substantial in size at 22.04 acres, placement of the home is in the center of the parcel with special attention given to placement away from the northern home. Part of the setback is being mitigated by a substantial amount of evergreen trees as well as berm placement.

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Nicholas Cole
Residential Single Family

Applicant requests a variance of 2' to allow a 6' tall fence to be located in the front yard setback of 8720 Howard Drive.

Town Code Reference;
§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:

Nicholas Cole was present, and further explained his request stating that he would like the fence in order to provide some privacy and security for his backyard. With having a corner lot and basically two front yards, anyone traveling down Connection Dr. has a clear view in to his backyard.

Mr. Krey asked Mr. Cole whether he has surveyed the neighborhood to see if there are any other properties with fences in similar height, and if he knows the addresses or intersections offhand. Mr. Cole responded that there are other corner lots with 6 ft. fences which come a lot closer to the road than what he is proposing, he does not know the addresses but gave directions as to where they are located.

Mr. McNamara noted that Mr. Cole's fence has already been installed, and asked him why. Mr. Cole responded that he misunderstood the process. He did pull his permit application before the fence was installed. A portion of his fence was approved when he applied for his permit, the rest of it needed the variance.

Mr. Mills complimented Mr. Cole's decision to have a white vinyl fence installed, but also commented that as a board they are concerned that the fence has already been installed prior to this meeting. Mr. Mills asked Mr. Cole what the cost would be to have the unapproved portion of the fence removed, Mr. Cole responded that he spent \$10,000 on the fence in its entirety, he assumes it would be pricey to have the fence company come out to remove even a portion of it.

Mr. Mills asked about landscaping along the fence line, and whether Mr. Cole had anticipated installing any. Mr. Cole explained that he purchased the home last October, and since then he has spent a lot of time cleaning up the old overgrown and run down fence and lack of landscaping that was present when he bought the property.

Mr. Mills stated that while he understands that it may have enhanced the area, he would like to have some landscaping along the fence line that runs along Connection Drive, in order to mitigate the view of what

appears to be a white wall, which is the fence. Mr. Mills commented that landscaping similar to what Mr. Cole has along the side of his house would also be a good fit for along the fence line as well.

Mr. Skaine noted that Mr. Cole applied for this variance on August 11, 2021 and asked when he had the fence installed, Mr. Cole responded approximately 3-5 days after that date. Mr. Skaine asked Mr. Cole why he installed the fence knowing he would be violated. Mr. Cole stated that it is because he knew he'd need to wait 3-4 months for the fence company to come back to finish the fence.

Mr. Skaine asked Mr. Cole if he had been given any notice that the fence was up in violation and it may need to be removed. Mr. Cole responded that he was informed it was in violation, but he was not told it may need to be taken down.

Mr. Michnik noted that Mr. Cole is in a unique situation, being on a corner lot with what is technically considered two front lots. Mr. Michnik commented that while he also understands Mr. Skaine's concerns, he believes that you need to take action when the opportunity arises. Mr. Michnik stated that while Mr. Cole's misunderstanding of the process led him to install the fence prematurely, he does not have a problem with the fence itself and appreciates the improvements Mr. Cole has made to that area.

In regards to Public Participation, no one spoke.

ACTION:

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

1. Boxwood or similar to be planted approximately 1 ft. in height, each one centered per fencing panel, along the span of the fence.
2. Landscaping to be maintained or replaced as necessary.

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

MOTION CARRIED

Appeal No. 2

Davmicor, Inc
Residential Single Family

Applicant requests a variance to allow an accessory structure to be constructed without a principal structure located at 5695 Shimerville Road.

Town Code Reference;
§229-55 (J)

DISCUSSION:

Mr. Bleuer stated that the applicant has requested in writing, that this appeal be tabled, until they request the item be re-placed on the agenda.

Mr. Bleuer noted that one letter of correspondence was received for this item from Jim Purcell of 5745 Shimerville Road. This item has been placed in the project file, and if the request is brought back to the board, the letter will be re-distributed, placing it back in to the record.

ACTION:

Motion by Raymond Skaine, seconded by Patrick Krey to **table** Appeal No. 2.

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

MOTION CARRIED**Appeal No. 3**

Vanessa & Mark Morgado
Residential Single Family

Applicant requests a variance;

1. to allow a detached accessory structure (shed) to be located within the front yard setback; and
2. of 88 sq. ft. to allow a 288 sq. ft. detached accessory structure (shed) located at 5271 Willow Lake Court.

Town Code Reference;

1. §229-55(D)
2. §229-55(H)

*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.

Raymond Skaine recused himself from Appeal No. 3

DISCUSSION:

Vanessa and Mark Morgado were both present, with Mr. Morgado explaining that they would like to build a shed on what is considered their second front yard, as they are located on the corner of Willow Lake Court and Thompson Road.

There is currently a shed already located on that side, in between two Willow trees, in a low area. Mr. Morgado noted that it appears to have been built approximately 20 years ago, and they would like to replace that shed, only in a higher location.

Mr. Krey asked if the existing shed will remain on the property, Mr. Morgado responded that it will be removed, as it is dilapidated.

Mrs. Burkard asked what the distance is from the side to Thompson Road, Mr. Morgado responded that there's approximately 26-30 ft. It will not be seen much from the street, as the landscaping and existing trees create a natural barrier.

Mr. McNamara asked where the septic system is located, Mr. Morgado responded that it is located in the back and on the side.

Mr. Michnik asked why they chose a barn style shed, Mr. Morgado responded that he is assembling it himself and this style is easier to construct. Also, because of the peak, the loft inside provides additional space.

Mr. Michnik asked Mr. Morgado if he plans to run any business out of the shed, Mr. Morgado responded no.

The height of the shed is approximately 15 ft., it will be painted the same color as the house, and will have a concrete pad.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Patrick Krey, seconded by Patricia Burkard to **approve** Appeal No. 3 with the following conditions;

1. Old shed is removed
2. Color of the shed is to match the house

Patrick Krey	Aye	Ryan Mills	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Daniel Michnik	Aye		

MOTION CARRIED

Appeal No. 4

Douglas Curella
Agricultural-Rural Residential

Applicant requests a variance to allow a 175' front yard setback for the construction of a single family home located at 5655 Strickler Road.

Town Code Reference;
§229-41 (A)

*average front yard setback of 113'.

Mr. Mills recused himself for Appeal No. 4

DISCUSSION:

Douglas Curella was present to further explain his request, stating that he'd like a variance of 175' for a single family home.

Mr. Curella explained that he provided all of his information in his variance packet, he'll answer questions on that if necessary but feels they are self-explanatory.

Mr. Curella did note that he purchased this property as well as additional property in order to build this single family home, and north and south of the property is surrounded by trees, creating natural barriers. The homes located on Strickler down the road from him are setback further than 175'.

With the new development going in nearby, there are many construction and other vehicles which travel on Shamus Lane, and he does not want to have his home too close to the road.

Mr. Skaine asked what the setback is for that location, Mr. Bleuer responded that it varies based on the house, but that they were able to estimate the average setback on that stretch of Strickler Road associated with his lot is 113'. Mr. Skaine asked if the other lots had received variances to accommodate their setback, Mr. Bleuer responded that possibly yes, it depends on the property. The setback can range from 45 to 200 ft. in that zone.

Mr. Bleuer stated that it is rather complex to establish that setback, difficult to do without looking at each individual lot.

Discussion continued regarding setbacks along that area of Strickler Road.

Mrs. Burkard noted that the other houses in that stretch of road cannot be seen from the road at all, they are set so far back. Mr. Curella stated that the house will be approximately 2100-2400 sq. ft.

Mr. McNamara stated that he drove along the Strickler road, and multiple homes are setback the same if not more, therefore he has no issues with this request.

Mr. Krey also stated the same regarding the setback of other homes in the area.

In regards to Public Participation, no one spoke.

ACTION:

Motion by Raymond Skaine, seconded by Richard McNamara to **approve** Appeal No. 4 as written.

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

MOTION CARRIED

Meeting was closed at 5:51 p.m. with a motion by Richard McNamara, seconded by Raymond Skaine.

Amy Major
Senior Clerk Typist