

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday January 10, 2017  
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
Jonathan Hickey	

Zoning Board of Appeals members absent: David D'Amato

Town Officials present:

Director of Community Development James Callahan  
Deputy Town Attorney Steven Bengart  
Councilman Paul Shear

Other interested parties present:

George Weckerle     Alex Fox     Mary Beth Kiesel     Molly Kiesel     Paul Gilden

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:01 p.m. The session ended at 7:15 p.m. and the Zoning Board of Appeals meeting opened.

**Old Business**

**Appeal No. 1** (from Sept 2016 Meeting)

John Braddell/Lakeside Sod  
Industrial Business Park

Requests the Board of Appeals approve and grant a 93' 8" variance to allow for a 153' 8" tall wind turbine located at 6660 Goodrich Road.

Appeal No. 1 is in variance to §173-4(C).

**DISCUSSION:**

Alex Fox is the installation manager at United Wind. He spoke with Tyler Palmer, who was in attendance at the last two meetings, who said the Board had some concerns about possibly moving the turbine further away from the neighbor's house. If they were to do that it would increase the cost of the project tremendously. In electrical costs alone it would probably triple the cost of the equipment, which includes the wire size and the conduit length. They would have to go under the driveway. Costs would be encouraged due to the use of the crane, they would have to put in more temporary road mat.

Mr. McNamara asked how much more it would cost to move the turbine to the other side of the pond. Mr. Fox said 2-3 times more than what is estimated if the turbine is installed in the proposed location. He went

on to say that on a typical job the electrical runs between \$2500 and \$3000, to move the turbine would cost between \$6000 and \$9000. They would need at least twice the length of the cable wire which would be about 500'. They typically run a 2 gauge conductor wire and a 4 gauge ground wire. Mr. McNamara said he thinks the numbers a little high. The Board's concern is the neighbors, they will see it every day.

Mrs. Burkard said there are a good amount of trees in the area and asked how much higher the turbine will be than the trees in the neighbors backyard. Mr. Fox said the trees are 60', the turbine will be 80' higher than the top of the trees. Mrs. Burkard said she does not find the additional cost outrageous, to keep the neighbor happy it's only \$6000-\$9000. Mr. Fox said it is a considerable amount over the price of the actual project. It costs \$85,000 to install the entire system, when you add the additional cost it makes it seem a lot more expensive. Mr. Fox explained that the owner will make a lease payment on a 20 year lease. He will pay about half of the \$85,000 due to grants and incentives that NY State gives out along with the Federal ITC. The extra \$6000-\$9000 will be over a 20 year period. Mrs. Burkard said she is very concerned for the neighbors, she believes they have the right to have the law followed.

Mr. Hickey noted that he was not at the meeting in November, nor was he a Board member at the time, he has just recently been appointed to the Zoning Board of Appeals. However, he would like the record to reflect, and his fellow Board members to know, that he has reviewed at length both the September 2016, and November 2016 meeting minutes which included issues related to not only this variance but the various neighbor's concerns as well. Mr. Fox said there is no other variance sought other than the height variance and he confirmed that there have been no changes to the proposal since the last meeting.

Mr. Fox said the center of the turbine will be 296' from the lot line. Chairman Michnik asked how much of the turbine will show given the distance between the turbine and the lot line. Mr. Fox said about 10' of the tower would show and after a while you won't even notice it, it's like a telephone pole. It's hard to see them in the winter, in the summer time it's a little clearer because of the sunny days. Chairman Michnik asked if Mr. Fox and his company are willing to invest another \$6000-\$7000. Mr. Fox said if it came down to it, they probably could, but to keep the cost down for them (the company) is to keep the cost down for the customer, he would like to see it located as proposed. Chairman Michnik asked if Mr. Fox is in a position to make a decision for the property owner. Mr. Fox said he knows the property owner wants the turbine in the location as proposed, so he (Mr. Fox) would not feel comfortable making a decision on behalf of the property owner. Chairman Michnik said he would be more comfortable if Mr. Fox could bring back some hard numbers for the turbine if it is moved to the other side of the pond and bring someone back to the meeting that can make a decision.

Mrs. Burkard asked who many feet would be between the turbine and the property line if the turbine is moved to the other side of the pond. Mr. Fox guessed it would be about 530'.

Mr. Fox said they use copper wire because is it easy to use, they can use smaller wire sizes and they can get a decent rate on it. Mr. McNamara said they can use aluminum and use a reducer on the end of the wire, this may save some money. Mr. Fox said that is just another component that could go wrong.

Mrs. Burkard wants to know the exact lease cost for the owner. Mr. Fox said he will look into it.

Mr. Fox requested the request be tabled.

**ACTION:**

Motion by Jonathan Hickey, seconded by Ryan Mills, to **table** Appeal No. 1 (from the Sept 2016 meeting), under Old Business.

**ON THE QUESTION:**

Information is to be provided on the following:

- 1.) Moving the location of the turbine.
- 2.) The use of aluminum wire as opposed to copper wire in order to bring down the cost.
- 3.) Someone with decision authority should be in attendance at the next meeting.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 1** (from November 2016 meeting)

Mary Beth Kiesel  
Residential Single Family

Requests the Board of Appeals approve and grant a 1400 square variance to allow for a 1600 square foot detached accessory structure located at 5105 Harris Hill Road.

Appeal No. 1 is in variance to §229-55 (H).

Richard McNamara recused himself and left the dais.

**DISCUSSION:**

Mary Beth Kiesel is present and submitted photos of the revised submission. She said it is a 40' x 40' structure with 11' walls, the shutters will be cranberry to match the house. The siding will be horizontal vinyl siding, also to match the house. There will be brick along the bottom of the structure on all four (4) sides, which is a masonry sheet about an inch thick. Ms. Kiesel submitted a document showing a basic landscape plan.

Mr. Hickey noted for the record that he was not a member of the Board nor was he in attendance at the November 2016 meeting, however he has reviewed at length the minutes from November 2016 and the statutes that would apply to this request. He asked if there are any other changes to the request other than those noted. Ms. Kiesel said the color of the roof has been changed to gray, this will match her house. She knows the view was a concern but the structure is going to be 250' off Harris Hill Road. There will also be landscaping and a fence to help buffer the view. The 10' x 15' existing shed will be removed. Ms. Kiesel said she is ok with the shed removal being a condition of the approval. The garage doors will match the garage door on the house.

The total acreage her and her family own, including the business, is 9.88 acres.

Chairman Michnik asked if there are any plans to build additional homes on the property in the future. Ms. Kiesel said when the duplexes were built, the plan was accepted for four (4) buildings. There was another single story ranch approved for the property but they are not going to do that. The fence will be extended to her property line, and will be 10' past the building.

### **ACTION:**

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 1 (from the November 2016 meeting) under Old Business, subject to and contingent upon the following:

- 1.) The existing 10' x 16' shed be removed within 6 months of final Certificate of Occupancy.
- 2.) The fence is to be erected within 6 months of final Certificate of Occupancy completion of the structure. The fence is to be located on the whole south side of the property, 10' past the structure.
- 3.) The applicant has testified that the structure to be built will be in conformance with Exhibit A, the landscaping per Exhibit E and F, and the quote from Parco Building Systems per Exhibit G. All exhibits are on file.

### **ON THE QUESTION:**

The applicant has provided testimony and evidence that this project is different from many others in that this is a uniquely large parcel. The applicant owns many other structures on this parcel that will block most of the view of the proposed structure from the street. It is further mitigated by landscaping and other steps the applicant has taken to aesthetically enhance the building and allow it to blend in with nearby structures.

Jonathan Hickey	Aye	Richard McNamara	Recuse
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Richard McNamara returned to the dais.

### **New Business**

#### **Appeal No. 1**

Gary Clunie  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 328 square foot variance to allow a 528 square foot detached secondary garage.
- 2.) A 4' variance to allow for a 6' side yard setback for the detached secondary garage.

Both requests relate to 10505 Royal Oak Drive.

Appeal No. 1 is in variance to §229-55 (H) and §229-55 (E) (1).

### **DISCUSSION:**

The applicant has requested to be removed from the agenda until further notice. Documentation is on file.

**Appeal No. 2**

John Connelly  
Residential Single Family

Requests the Board of Appeals approve and grant a 5' variance to allow a 5' side yard setback for a detached accessory structure (emergency generator) located at 8165 Floss Lane.

Appeal No. 2 is in variance to §229-55 (H).

**DISCUSSION:**

There are three (3) neighbor notification forms on file.

Paul Gilden, with Energy Cost Control, is the contractor and is present on behalf of the applicant. Mr. Gilden originally installed the generator in 2007, it is now beyond repair. In 2007 there were no setback requirements. With the new generator they have to come out farther from the house about a foot and a half. There is a fireplace unit and a large patio beyond that, so the generator could not be placed in the back yard. This generator is quieter than the last one.

Mr. Hickey asked for a comparison of the size of the old generator to the new one. Mr. Gilden said they are within an inch of each other. Mr. Hickey asked for reasons why a residential homeowner would need a generator, what will it be used for? Mr. Gilden said it is used for power outages, to keep the sump pump in the basement running, and for heat.

Mr. Gilden confirmed that the generator will be in the same area, within a foot, of the old one. He had to shift it over a foot because of the required 5' clearance for the openings. Mr. Mills pointed out that if the generator was put on the west side of the property it would be very close to the neighbor. Mr. Gilden confirmed the generator is a 16 kilowatt which is enough for what the applicant needs. The old generator was a 13 kilowatt. There are bushes in the front of the property that buffer the generator from view.

**ACTION:**

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **approve** Appeal No. 2, as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting Adjourned: 7:53 p.m.

Carolyn Delgato  
Senior Clerk Typist