

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
January 11, 2022

This meeting was not an in-person meeting, it was strictly virtual.
The Zoom meeting link may always be found on the published agenda, which is accessible
on the Town of Clarence's website

The Zoning Board of Appeals Committee entered in to Executive Session at 5:15 p.m.

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

Zoning Board of Appeals members present:

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

Town Officials present:

Junior Planner Andrew Schaefer
Deputy Town Attorney Steven Bengart
Supervisor Patrick Casilio
Councilman Paul Shear

Other interested parties present:

iPad	John LaFalce	Marisa Miosi	Kevin	Joe Pohlman
John Miosi	Dan Albrecht	Linda M	*iPad*	Ari Goldberg
Salvatore Gandolfo	*iPhone*			

OLD BUSINESS

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara for a **rehearing** in relation to a prior agenda item, Appeal No. 2 under Old Business from the November 9, 2021 meeting. The reason for the motion is because two of the primary Zoning Board of Appeals Board Members were absent from the meeting. There is pending litigation in regards to the meeting, and Chairman Mills feels that it is important all board members are present for this agenda item.

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

MOTION CARRIED

Mr. Bengart stated that this motion means that the Appeal can be re-heard. It will be put on an agenda, and reheard by the Zoning Board of Appeals. At that time, the board will choose to take whatever action it sees fit.

Appeal No. 6 (from the April, 2021 meeting)

Daniel & Lydia Albrecht
Agricultural – Rural Residential

Applicant requests a variance to allow a 76' front yard setback for the construction of a single family home; located at 10175 Keller Road.

Town Code Reference;

§229-41(A)

*Average front yard setback of 46'

Note: This request for this property supersedes the April 2021 variance request, which was tabled.

DISCUSSION:

Mr. Albrecht was present virtually, to further explain his request, stating that originally they had applied for a 200' setback, which the board had stated that they didn't feel it was appropriate that his front yard would be looking at his neighbor's backyard. They adjusted the setback to 76', which is the same distance from the road as the home two door to the west of his property.

Mr. Krey asked Mr. Albrecht why they would like a variance for a longer driveway, and how would it line up with other homes on the road. Mr. Albrecht responded that they currently have three small children, they live in an area where the speed limit is 45 mph, and they feel that being a bit further back would add some safety for their family.

Additionally, when they have guests over, a longer driveway will keep them from needing to park in the street.

Mr. Skaine stated that he thinks between the speed limit in that area, as well as the narrow road, a longer driveway would be a good asset to the house.

Mr. Mills thanked Mr. Albrecht for reducing the setback and variance request, stating that it brings them more in line with the neighbors.

In regards to Public Participation, the following resident spoke:

- Linda Mosher of 10165 Keller Road, stated that the Albrecht's have been wonderful neighbors for over 60 years for her family. There is a beautiful line of Pine trees between the two properties, so she feels that the requested setback is completely appropriate.

Neighbor Notifications were sent to the following and are on file:

- 10165 Keller Road – Linda Mosher
- 10185 Keller Road – Ken Albrecht

ACTION:

Motion by Richard McNamara, seconded by Patricia Burkard to approve Appeal No. 6 under Old Business as written.

ON THE QUESTION:

Mr. Bengart stated that when making the motion, it is assumed that the board has taken all information from previous meetings, any additional neighbor input, and all other questions in to consideration. Chairman Mills responded yes.

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

MOTION CARRIED**Appeal No. 1**

John LaFalce
Residential Single - Family

Town Code Reference;

- 1) §229-55 (H)
- 2) §229-55 (H)

Applicant requests a variance;

- 1) to allow a secondary detached garage; and
- 2) of 736 sq. ft. to allow a 936 sq. ft. secondary detached garage; located at 6460 Deerview Court.

DISCUSSION:

Mr. LaFalce was present virtually, and further explained his request stating that he is seeking this variance for a detached secondary garage to house sports equipment, lawn equipment, patio furniture, children's toys, bikes, etc.

Mr. McNamara asked Mr. LaFalce if he has considered attaching this garage to his other structure, Mr. LaFalce responded that yes, he did look in to multiple other options for secondary structures. Mr. LaFalce added that the current configuration works best for a detached garage, if he attempted to add a breezeway with the side load garage that he already has, he would need to pin foundations and re-route electrical service lines underground. He would also need to relocate bubblers and drainage lines from the existing structure as well as attempting to match roof lines. Mr. LaFalce stated that he was focusing more on construction than of demolishing and rebuilding the current structure.

Mr. McNamara asked Mr. LaFalce if he plans to run electric and heat out to the proposed garage, Mr. LaFalce responded that he plans to have electric yes, but no heat although it will be insulated.

Mr. McNamara asked if Mr. LaFalce plans to run any type of business out of the proposed garage, Mr. LaFalce responded no.

Mr. Krey asked Mr. LaFalce if he's considered building the proposed garage any smaller than 936 sq. ft., Mr. LaFalce responded that he'd like to maximize the cost of the materials, delivery, concrete, etc. he felt this configuration maximized with less waste.

Mr. Krey asked if Mr. LaFalce has thought about what type of siding he will put on the proposed garage, Mr. LaFalce responded that it will match the house. He may also include a small amount of brick on the bottom to match the existing front brick, but it will be brick and vinyl to match the existing character of the house.

Mr. Krey asked Mr. LaFalce if he plans to add any landscaping around the proposed structure, Mr. LaFalce stated that he may include some small shrubs, but nothing that may impair anyone driving up the driveway.

Mr. Skaine asked Mr. LaFalce what the distance is from the edge of the proposed garage to his property line of the neighbor to the north, Mr. LaFalce responded that it is over 35 ft. Mr. Skaine noted that the stakes which Mr. LaFalce had placed in the ground indicated where he plans to build the proposed garage. Mr. LaFalce responded that yes, it is an approximate location.

Mrs. Burkard confirmed that the materials on the proposed shed will match the materials on the existing home, Mr. LaFalce responded yes.

Mr. Mills referred to the documents that Mr. LaFalce submitted, which includes a floor plan, front elevation and side elevation, which Mr. Mills marked as Exhibit A. Mr. Mills noted that the front elevation shows the bottom third of the structure as stone, and confirmed with Mr. LaFalce again that it will be brick, Mr. LaFalce responded yes, it will be brick.

Mr. Bengart asked Mr. Mills to describe Exhibit A in more detail, Mr. Mills explained that Exhibit A consists of a front elevation, a side elevation, and a floor plan of the proposed garage. The upper right corner has the address as well as a notation that it is a 26x36 sq. ft. detached garage sketch.

Mr. Mills added that he does feel it would be a nice addition to have the brickwork over the entire façade, or the bottom third as Mr. LaFalce has proposed.

Mr. Mills asked Mr. LaFalce about the drawing that indicates a vinyl cedar shake at the top of the proposed structure, Mr. LaFalce responded that he is not sure if he is going to have it built that way, it is a rough drawing and he has a couple of options he is considering.

Mr. Mills asked Mr. LaFalce if they were to grant the variance with conditions, one of which includes no business is to be operated out of the proposed structure, and that at least 1/3 of the structure is brick, color to match the existing front façade of his house, would Mr. LaFalce agree to that. Mr. LaFalce responded of course, yes.

In regards to Public Participation, the following spoke:

Councilman Shear asked if the driveway will lead to the proposed garage, or will the structure be free standing. Mr. LaFalce responded that he would like to continue the existing concrete to the proposed garage.

Neighbor Notifications were sent to the following, and are on file:

- Jonathan from 6466 Deerview Court
- James from 9612 Deerview Lane

- Anthony from 6472 Deerview Court
- John from 6483 Deerview Court
- Mark from 6477 Deerview Court
- John from 6471 Deerview Court

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine to **approve** Appeal No. 1 with the following conditions:

1. At least 1/3 of the front façade to be matching or as close to matching as possible, the actual brick of the front façade of the existing home located at 6460 Deerview Court.
2. No business to be operated out of the garage.
3. The driveway ties in and with similar material to the existing driveway.

ON THE QUESTION:

Chairman Mills noted that this parcel is 1.46 acres, 210 ft. wide by 404 ft. deep, which is large for a Residential Neighborhood parcel therefore the size and aesthetics of the garage will fit in with the character of the neighborhood.

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

MOTION CARRIED

Appeal No. 2

Nicholas Galante
Industrial Business Park

Town Code Reference;

- 1) §229-100
- 2) §229-49

Applicant requests a variance;

- 1) to allow the use of the Residential Single-Family code standards; whereby allowing the construction of a single family home in the Industrial Business Park zone; and
- 2) of 0.17 acres to allow a 0.83 acre parcel; located at 4250 Shisler Road.

DISCUSSION:

Mr. Galante was present virtually to further discuss his request, adding that he is requesting this variance so that he is able to build a new home on property located at 4250 Shisler Road.

Mr. Galante stated that when he purchased the property last June, he was not notified by the seller of the land or the lawyer that helped to process the sale that the property was zoned Industrial Business Park, therefore he was under the impression that it was zoned Residential. He didn't find out it was zoned Industrial until he submitted his application to build the new home.

Mr. Skaine noted that he was surprised that there are existing homes in the same area that Mr. Galante is requesting the variance for. Mr. Galante stated that there is one house already next to him, and the other side of his property is an empty corner lot.

Mr. Skaine asked whether the other properties are also zoned Industrial, Mr. Galante responded that he learned from the Planning Department that the entire area is zoned Industrial Business, which Mr. Schaefer confirmed.

Mr. Krey asked whether the homes that are currently there were there prior to being zoned Industrial Business Park, or if they have also received variances. Mr. Schaefer responded that he is unable to speak on the preexisting homes, they were unable to research that information.

Mr. Galante stated that one of the properties that the Planning Office was able to look in to, had previously been granted a variance. The owners had purchased two adjoining properties, and prior to completion of the sale, it was dependent on a variance being approved.

Mr. McNamara asked if everything behind the property is Industrial, and if there are any thoughts on what the Town of Clarence plans to do with that property. Mr. McNamara stated that he feels it is a good location for a home, and Tillman Park is across the street.

Mr. Krey asked Mr. Bengart whether this is a use variance or an area variance. Mr. Bengart responded that he believes it is a use variance, and asked Mr. Schaefer for confirmation. Mr. Schaefer responded that yes, it is a use variance for a Single-Family home in the Industrial Business Park. The acreage requirement is a stipulation from the minimum lot size for Residential Single-Family vs. Industrial Business Park.

Mrs. Burkard asked about the short Environmental Assessment Form where it asks if “the site of the proposed action or adjoining property has been the subject of remediation for hazardous waste” and why the response was yes.

Mr. Schaefer stated that the adjoining property was the reason for the response, that Mr. Galante’s property itself does not appear to have any remediation.

Mr. Mills referred to the front and side elevations which are in the file, now marked as Exhibit A and dated 8/8/2021 from the architect William Pearce Jr., and asked Mr. Galante if the elevations shown are accurate photos of the home he plans to build. Mr. Galante responded yes.

Mr. Mills asked what the approximate square footage is of the home, to which Mr. Galante responded that it is approximately 2,700 sq. ft. with an option of finishing two rooms at a later date, which would bring the total to approximately 3,100 sq. ft.. Those spaces are located on both sides of the garage.

Mr. Mills asked Mr. Galante if the front façade will be a vertical vinyl material, Mr. Galante responded that it will be horizontal on the bottom with vertical siding on the top.

Mr. Skaine asked who the Industrial Business Park zone is, and whether they have any objections to any of these requests. Mr. Skaine asked who controls that zoning. Mr. Bengart responded that it is most likely a number of parcels. Mr. Bengart added that the question isn’t who owns it, but whether the appropriate people were notified. Mr. Schaefer stated that all adjacent properties of 4250 Shisler Road were notified:

- Maureen Zimmerman of 4230 Shisler Road
- Michael Development, LLC with a mailing address of 13600 Railroad St. Alden, NY.

No responses were received in the Planning and Zoning Office.

In regards to Public Participation, no one spoke.

Mr. Shear asked Mr. Bengart whether the State Environmental Quality Review Act needs to be addressed. Mr. Bengart responded that yes, the board plans to.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, that pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Part 1 Short Environmental Assessment Form as submitted and **approve** the Part 2 & 3 Short Environmental Assessment Form as prepared and to **issue a Negative Declaration** on the proposed Nicholas Galante variance request at 4250 Shisler Road. This Unlisted Action involves a lot split to create one (1) additional lot in the Industrial Business Park zone. After thorough review of the submitted sketch plans and Environmental Assessment Forms it is determined that the proposed action will not have a significant negative impact on the environment.

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

MOTION CARRIED

ACTION:

Motion by Richard McNamara, seconded by Raymond Skaine to **approve** Appeal No. 2 as written.

ON THE QUESTION:

Mr. Mills noted that this is a unique situation due to the Industrial Business Park zone with nearby residential homes. Based on the geography, it appears that the proposed home will be a good fit for the area, and would not be detrimental to the character of the neighborhood or location.

Mr. Krey added that this situation was not self-created, that the applicant was not made aware of the zoning when he purchased the property. The hardship that he would face if he attempted to re-sell the property, he is unable to build a home there if this variance is not granted.

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

MOTION CARRIED

Appeal No. 3

Joseph Pohlman
Agricultural-Rural Residential

Applicant requests a variance to allow a detached accessory structure (Pole Barn) to be located within the front yard setback; located at 10300 Clarence Center Road.

Town Code Reference;
§229-44 (E)

DISCUSSION:

Mr. and Mrs. Pohlman were present virtually, and further explained their request. Mr. Pohlman stated that they are new homeowners, having purchased the property just over three months ago. They purchased the property because of the potential for horses, as there is currently a barn located on the property, as well as a cover-all structure for riding indoors during the winter months.

Mr. Pohlman stated that they would like to build a new barn, as the current barn has low ceilings and small stalls, not adequate for the horses that they have. They would like to build a 36x36 sq. ft. pole barn in front of the arena that is currently located on the property, and next to the existing barn currently there. The proposed location is approximately 6 ft. away from the existing cover-all structure, and approximately 12 ft. away from the existing barn.

Mr. Pohlman added that the benefits of the barn being located there would be safe and easy access in to the arena during inclement weather. Also, they intend to run electricity, gas and water to the proposed pole barn, and the location allows for ease of access for bringing those utilities in to the pole barn.

Mrs. Pohlman added that they would like to utilize the existing barn for equipment storage, this way no equipment would be outside, it would all be stored inside.

Mr. Krey asked why these would the not place the proposed structure behind the existing barn, that way a variance would not be needed. Mr. Krey confirmed with Mr. Schaefer that if the barn was placed behind the existing barn, that they would not need a variance. Mr. Schaefer confirmed this, stating that the variance is because an accessory structure is going in front of the front foundation of a principal structure.

Mr. Pohlman responded that while they did consider that option, there are a few challenges with locating it there. Mr. Pohlman stated that there are two reasons as to why they would like to build it where they are requesting, for one the ground slopes down considerably on that side. This would cause an issue with drainage and water flowing in to where they would build the barn. They would need to build the barn up considerably higher than where the horses will be, and the surrounding area where the horses will be traveling through. It is very wet on that side area, therefore it comes down to safety for both the horses and the building itself.

Mr. Pohlman added that the ease of access in to the arena gets lost, as there is a longer walk to enter the barn, and a walk up the hill for horses is dangerous. The slope is steep enough that it would be an issue for the horses, and they would need to look in to doing a re-grading of the property. The site that they are proposing is the same level as the cover-all, and leads to a safer area for the horses.

Mr. Skaine asked Mr. Schaefer if because this would be a secondary structure, is it exempt from rules that they have known previously. Mr. Schaefer stated that in the Agricultural-Rural Residential zone, there is no square footage limit for accessory structures. The accessory structures would only need to meet the setback requirements and obtain the appropriate building permits.

Mr. Skaine asked if under that classification that means if someone wanted to have three of these types of structures that would be allowable, Mr. Schaefer responded that is correct.

Mr. McNamara asked whether the Pohlman's have given any consideration to extending the existing further back, and attaching the proposed structure that way. Mr. Pohlman responded that they did have some builders come and discuss that possibility with them, and there were two main issues. The cost of building or adding on to an existing structure far exceeds the cost of building a separate structure, therefore they would also get less for their money.

Mr. Pohlman also explained that with one large barn, they would have to house both the equipment and horses together in the same building. One of their goals is for the safety of the animals, to separate the equipment, machinery, and gas from the horses.

Mr. McNamara asked how big the proposed structure is, Mr. Pohlman stated it will be a 36x36 sq. ft. pole barn. Mr. McNamara asked if they plan on having a hay loft as well, Mr. Pohlman responded that it is not their intention to include a hay loft. There is currently a hay loft inside the existing barn, which they intend to continue to use as a hay loft.

Mr. Pohlman stated that their intentions are to have the color scheme of the proposed structure the same as the existing structures.

Mrs. Burkard asked how far the proposed structure will be from the road. Mr. Pohlman responded that it will be further back than the barn that is currently on the property.

Mr. Burkard asked how many horses they will have, Mr. Pohlman responded that they have a minimum of two, potentially three in the future.

Mr. Mills asked what materials will be used on the proposed structure, Mr. Pohlman responded that the plan currently is to have a steel structure, with a Wainscoting type of material along a portion of the bottom. The bottom itself will be a stone type siding in the front, facing Clarence Center Road, along with the Wainscoting siding, with a steel roof. It will be insulated, and will also have shutters, as well as other decorative features, which are not shown in the photos that they included.

Mr. Mills asked if the board made it a condition of approval that at least one third of the front façade facing Clarence Center had a stone-like product, would that be acceptable. Mr. Pohlman agreed yes, it would.

Mr. Mills asked if the Pohlman's plan to run a business out of this property, Mr. Pohlman stated no, it is for personal use only.

Mr. Mills asked what the one other structure to the rear of the property is, Mrs. Pohlman responded that it is a "Running Shed" which is an open stall for the horses in the pasture that want to get out of the

weather. There is hay in there, and the horse can step inside for a reprieve from any undesirable elements. Mr. and Mrs. Pohlman both confirmed that the structure will stay on the property, in its current location.

Mr. Mills asked who they will use for construction of the pole barn, Mr. Pohlman replied that while they have been in contact with a couple of builders, and as of now it appears that they will go with Stately Builders.

In regards to Public Participation, Councilman Shear asked about the plastic brick that was indicated would be around the front of the structure, and not a real masonry product. Mr. Pohlman responded that they were considering putting that material at the base of the structure, the material that resembles real stone, but is siding. Rather than have metal along the bottom, they want to put this material on, in order to dress it up more.

Councilman Shear stated that his only comment for the Zoning Board is that if they are going to approve a plastic material, that they should request a sample of the material before approving it.

Mr. McNamara asked how far the proposed structure will be from the existing barn. Mr. Pohlman responded that he believes it is in excess of 12 ft. away from the existing barn.

Mr. McNamara asked Mr. Schaefer whether a variance would be needed if the proposed structure was attached to the existing barn. Mr. Schaefer responded that because the proposed structure will extend past the front foundation of the principal structure, a variance would still be required.

Neighbor Notifications were mailed and are in the file.

Mr. Krey asked if the board should consider Mr. Shear's concerns regarding the plastic stone like material that the applicant is planning to use on the bottom front of the façade.

Mr. Mills stated to the Pohlman's that the type of material in question may have a negative impact on the character of their property as well as the neighborhood. Mr. Mills asked if they would contemplate using either real stone, or a different material in place of the stone like siding.

Mr. Pohlman asked if they eliminated the stone type siding completely and just kept the structure a solid steel, would that be acceptable. They chose the stone with the intentions of giving it more character, not to hinder the appeal. Mr. Pohlman stated that he has done quite a bit of building himself, having used this material that he is referring to, he can attest that it is not a cheap product.

Mrs. Pohlman stated that they would consider using a colored Wainscoting to better connect the colors of their home, and tie it all together more.

Mr. Bengart asked Mr. and Mrs. Pohlman if they are able to provide the board with their intentions now, or if they desire more time to think about it. Mrs. Pohlman responded that she is ok with a solid colored structure. Mr. Pohlman stated that if the board prefers a solid colored structure, they are willing to do solid metal all the way down.

Councilman Shear stated that he would prefer to see a 3 ft. Wainscoting along the bottom, in a complimentary color than the plastic stone like material.

Mr. Mills asked the applicants if they would be in agreement with a 3 ft. Wainscoting in one color then the rest of the structure in an alternative color. Mr. and Mrs. Pohlman both responded yes, they would.

ACTION:

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

1. 3-4 feet of Wainscoting on the bottom of the structure with a color that compliments the current colors on the home.

ON THE QUESTION:

Mr. Mills stated that due to the large size of this parcel, which is approximately 12.40 acres, and while it is a request for a front yard setback, it is mitigated by the size of the parcel and the fact that it is set back quite a way from the road, as well as the existing structure which is already closer to the road. Additionally, they will use complimentary colors and designs to the existing primary structures already located on the property.

Mr. Krey stated that the applicant explained why they need the structure to be placed where they are requesting, instead of on the rear of the property. Issues with drainage and needing to re-grade the property as well as expense, and also the benefits to the horses and their safety were both given as primary reasons.

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

MOTION CARRIED

Appeal No. 4

Salvatore Gandolfo
Agricultural-Rural Residential

Applicant requests a variance;

- 1) of 50' to allow a lot frontage of 100' and
- 2) of 0.57 acres to allow for a 0.75 acre parcel; and
- 3) of 50' to allow a lot frontage of 100' for the existing parent parcel, which would decrease in size after the newly created lot is split;

Town Code Reference;

- 1) §229-40
- 2) §229-40
- 3) §229-39(B)

located at SBL: 44.05-1-2.12 Heise Road.

DISCUSSION:

Mr. Gandolfo was present virtually, who explained that the property has been in his family for many years, his grandfather purchased the entire lot over 20 years ago. In that time, the lots have been split off to family members, which was his grandfather's plan. Mr. Gandolfo stated that in order to fit with the other lots, and also because he does not have any additional space on the other side of his lot, he would like to build on that lot with a 100 ft. frontage from the street.

Mr. Gandolfo added that the land is currently in the name of his father and his aunt and uncle, they plan to transfer it any day, but were advised to complete this step of the process first.

Mr. Mills asked Mr. Gandolfo if he has consent from the necessary family members to seek these variances, Mr. Gandolfo responded that yes, and he submitted the necessary paperwork which authorizes him to speak on behalf of his father, who is traveling and not able to make the meeting.

Mr. Krey asked for confirmation that the two houses that are currently located on the parent parcel have front footage of 100 ft., Mr. Gandolfo responded yes.

Mr. Krey asked for clarification regarding the lots as shown in Exhibit A, particularly Mr. Gandolfo's lot and the backyard. Mr. Gandolfo responded that they adjusted the acreage in order to meet the zoning criteria.

Mr. Krey stated that his perspective, which is based on Mr. Gandolfo's testimony as well as the other homes in the area that are already set back, is that the request is not out of character. He would like to understand the changes in acreage.

Mr. Bengart asked Mr. Schaefer for confirmation on Mr. Gandolfo's authorization to speak on behalf of his father, Mr. Schaefer confirmed this to be true.

Mrs. Burkard referred to the vacant section noted on the diagram (Exhibit B) that Mr. Gandolfo submitted, and asked what the future plans are for that lot, whether it will be another building lot. Mr. Gandolfo responded that there are no plans for that lot, or the land behind it.

Clarification on the Exhibits for the record continued. Exhibit A is the color-coded aerial view entitled Heise Road SBL 44.05-1.2.12 that Mr. Krey referred to. The colors depict the parent parcel in green, and the new parcel in blue. Exhibit B is a property survey dated 5/14/1999, marked job #157-7 which Mrs. Burkard referred to.

Mrs. Burkard asked if they were to grant this request, would they be able to build a house on the vacant land in the future, and would it make it four lots rather than three. Mr. Schaefer responded that yes, it would be a total of four lots, with one new frontage lot with this variance request. Pending all appropriate approvals, the parent parcel would be able to have an additional house located on it.

Mrs. Burkard asked if in the future, would that be able to have access to the back, where more homes would be able to be built. Mr. Schaefer stated that it would be tough, if they are proposing multiple houses, an Open Development would need to be done.

Mrs. Burkard asked if the property was purchased as one large lot, or as two separate lots. Mr. Gandolfo responded that it was one large lot. Mrs. Burkard asked if when the second house was built, was approval required in order to put the second house on the lot. Mr. Gandolfo stated that he cannot speak on behalf of the land transfer from that time which allowed his aunt to build her home in its location.

Mr. McNamara asked why they don't extend the back portion of the lot and make it larger, in order to prevent any possibility of future Open Developments. Mr. Gandolfo stated that he has no problem extending the acreage back further on the property to obtain the required amount of acreage. Mr.

Gandolfo also stated that initially the variance request was for the street frontage, and that they are willing to go as far back as necessary to meet the requirement.

Mr. Skaine stated that he has similar concerns with the acreage behind this property. Mr. Skaine asked Mr. Gandolfo if he has any guarantees that he or his family won't build back on that property. Mr. Gandolfo responded that he wouldn't be comfortable putting a guarantee in to writing, but that he has no personal intentions, nor does his family have any intentions of doing anything with the land.

Mr. Skaine asked Mr. Schaefer if No. 2 on the variance request was changed to read 1.3 acres, and how that could affect the meeting tonight.

Mr. Shear asked Mr. Schaefer if he would be able to give Mr. Gandolfo the appropriate depth that would give them 1.3 acres based on 100 ft. of frontage. Mr. Gandolfo responded that he believes it would be 555 ft.

Mr. Schaefer stated that the initial Request for Action for showed the back property line matching the existing parcels. He believes that the applicant pushed it back further in order to meet the acreage requirement for Erie County Septic. If they pushed it back to acquire the 1.33 acreage requirement for the Agricultural-Rural Residential Zone, then item No. 2 of the variance request would no longer be required.

Mr. McNamara stated that he would not specify how far back Mr. Gandolfo would need to go, but only state that he needs to meet the 1.33 acreage requirement.

Much discussion continued regarding the excess land behind the property.

Mr. Gandolfo asked if there was any possibility to extend his property back to match the property line of his aunt's property next door, as he sees no reason to add on any additional land.

Mr. Mills responded to Mr. Gandolfo, noting that as heard by the comments from the board, they are not comfortable with leaving that back portion of land open. If Mr. Gandolfo decides to keep item No. 2 on the variance request, the board will vote on it, or he can ask to have it removed, or he can also ask to have it tabled so that he can talk with his family some more about it.

Mr. Mills stated that feedback from the board is regarding concerns as to why a smaller lot is unnecessarily being created, when there is an abundance of land without any future use.

Mr. Gandolfo responded that he would prefer not to table it, because he would like to get started with construction of his home as early as possible. It is no problem for him to go deeper in order to meet the acreage requirement.

Mr. Schaefer noted that if it were to match the existing frontage lots currently on the property, there may be issues with Erie County and getting the septic approval, as 0.75 acres is needed in order to approve a new septic system.

Discussion continued regarding acreage size and requirements.

Mr. Mills asked Mr. Gandolfo what he plans to build on this property. Mr. Gandolfo responded that it will be a single family home, 4 bedrooms, approximately 3,700 sq. ft. A three car garage, but visually will appear as two, as one will be a two-deep bay.

Mr. Mills asked Mr. Gandolfo if he had any floor plans or similar for the intended home, Mr. Gandolfo responded yes he has the initial floor plan and exterior drawings, but at the time of variance application submission, they were not complete yet so may not have been submitted with his packet.

Mr. Mills asked Mr. Gandolfo to hold up the exterior elevation so that they can get an idea of what he is planning to build. Mr. Gandolfo's asked his future father-in-law (name not stated) also in attendance virtually, to show the draft photo of the house plan.

Mr. Gandolfo himself showed a photo from his phone, of what he plans for the house to look like, which Mr. Mills noted is contemporary in nature. Mr. Gandolfo stated that he will be building the home with his father in law, John Miosi. Mr. Gandolfo will be the general contractor for the job.

Mr. Mills noted that Mr. Gandolfo has three requests within this variance request. The first item is pertaining to the parcel that Mr. Gandolfo plans to build his house on, the second request relates to the size of the parcel, and the third request relates to the existing parent parcel. Mr. Mills stated that he has concerns with the first item, as Mr. Gandolfo is not the current owner of that parcel, and is not able to speak to what the owner may want going forward. Whether they want it as a building lot or not, or they are going to divide the property amongst other family members.

Mr. Mills noted that he would prefer to vote only on request No. 1 of the variance request, Mr. Gandolfo responded yes.

Mr. Schaefer confirmed that neighbor notifications have been mailed to the adjacent neighbors, no comment received.

Mr. Schaefer stated that request No. 3 is still required, as it is creating a new non-conforming lot in terms of the frontage, in order to prevent creating an illegal lot. The acreage would be met, but technically this approval would be creating two non-conforming lots, since the remaining 100 ft. would not be in conformance with the 150 ft. minimum for the Agricultural zone.

Mr. Gandolfo verbally attested that his neighbors are not in opposition of this request.

ACTION:

Motion by Patrick Krey, seconded by Raymond Skaine that pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Part 1 Short Environmental Assessment Form as submitted and **approve** the Part 2 & 3 Short Environmental Assessment Form as prepared and to **issue a Negative Declaration** on the proposed Salvatore Gandolfo variance request on Heise Road, SBL: 44.05-1-2.12. This Unlisted Action involves a lot split to create one (1) additional lot in the Agricultural-Rural Residential zone. After thorough review of the submitted sketch plans and Environmental Assessment Forms it is determined that the proposed action will not have a significant negative impact on the environment.

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

MOTION CARRIED

ACTION:

Motion by Patrick Krey, seconded by Richard McNamara to **approve** prong 1 and prong 3 of Appeal No. 4, as written.

ON THE QUESTION:

Mr. Krey stated that the benefit to the applicant exceeds any detriment to the health, safety, and welfare of the neighborhood or community, there will not be any undesirable change to the neighborhood.

As reviewed, the current closest properties have 100 ft. frontage, and the home that the applicant plans to build with that frontage, appears to fit with the character of the neighborhood.

Mr. Mills added that 6550 and 6540 Heise Road both have approximately 100 ft. of frontage. The two existing homes would correlate to this frontage, which would allow this new property to fit in with the character of the nearby parcels.

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

MOTION CARRIED

Appeal No. 5

John Ponicki
Residential Single-Family

Applicant requests a variance to allow a Ground-Mounted Solar Photovoltaic System; located at 6420 Conner Road.

Town Code Reference;
§184-6 (B) (1)

DISCUSSION:

Kevin Wagner representing Solar by CIR was present on behalf of the applicant, John Ponicki. Mr. Bengart asked if there is something in writing in the file which would allow Mr. Wagner to speak on behalf of Mr. Ponicki. Mr. Schaefer responded that there is a letter on file authorizing the company CIR to speak on the applicant's behalf.

Mr. Wagner stated that they are proposing to build a 14.4 KW Solar array, approximately 100 ft. from the back of the house, he does not believe it will be visible from the road. The electricity produced from this system will be for self-consumption only.

Mr. McNamara asked how large the system is, Mr. Wagner responded that it is 36 ft. 4 in. long by 20 ft. 6 in. tall.

Mr. McNamara stated that with the footprint, it states it is 18 ft.10 in. by 36 ft. 8 in., Mr. Wagner responded yes. Mr. McNamara noted that it is on an angle, and asked Mr. Wagner if it is stationary or moves with the sun. Mr. Wagner responded that it is a fixed system, which is mounted to the ground.

Mr. Mills asked for clarification on the height, Mr. Wagner responded that it appears to be 20 ft. 6 in. high.

Mr. McNamara asked what is under the structure, Mr. Wagner responded that they generally tell the customers to prepare the earth underneath so that there is no mowing or anything else that could potentially cause damage to the solar panel. Generally he advises clients to use mulch or pea gravel, but he is unsure what Mr. Ponicki intends to do. Mr. Wagner stated that it is a very wet area, so he isn't sure how Mr. Ponicki plans to work with that.

Mr. McNamara asked how big the system is, Mr. Wagner responded that it is a 14.4 KW30 480 watt panels.

Mr. McNamara noted that 20 ft. high is very high. Mr. Wagner stated that they have two configurations, one is 6 panels high, which is what this one is, or they can go to 5 panels high and move over one row longer rather than higher, which keeps it at 30 panels.

Mr. Wagner stated that unless you can see through the applicant's house, he doesn't believe you can see the system from the street. Mr. McNamara stated that he was able to see the woods and back of the property from the street when he drove over to look at the zoning stakes.

Mr. Skaine confirmed that they are putting 30 panels in, Mr. Wagner stated yes. It will be tilted at a fixed 26 degree angle.

Mr. Krey stated that because the lot size is under 5 acres, that is why a variance is needed. Mr. Krey agreed with Mr. McNamara's concerns of the visibility of the system from the street.

Mr. Krey asked if there was any way to mitigate the issue of it being visible from the street. Mr. Wagner stated that the applicant could plant some short bushes around the system, nothing that would interfere with it from getting sun.

Mr. Krey stated that since Mr. Wagner has been given permission to speak on behalf of the applicant, he assumes he is also permitted to accept conditions as well. Mr. Wagner agreed.

Mrs. Burkard asked what size Mr. Wagner is referring to when he suggested short bushes. Mr. Wagner responded that the bottom of the lowest panel will be approximately 3 ft. off of the ground, so nothing can exceed 3 ft. in the front. Because the system is south facing, it is possible to plant a row of arborvitae along the east end which faces the street.

Mrs. Burkard asked how much it will save on the applicant's electric bill, Mr. Wagner responded it will save him all of it. This system will provide all of his power. Mrs. Burkard asked how long the systems last, Mr. Wagner stated that they are warrantied for 25 years, but could potentially last 35-40 years. Mrs.

Burkard asked how long it would be before the initial costs are recovered, Mr. Wagner responded that normally it takes approximately 7 years.

Mr. Wagner reiterated that the only way to reduce the height, is to extend the length by a row. Reducing it from 6 panels high, to 5 panels.

Mrs. Burkard agreed that with some bushes, it would reduce visibility from the street.

Mr. Schaefer stated that for a ground-mounted solar system, the maximum height is capped at an accessory structure for the underlying zoning classification. For Residential-Single Family, the maximum height for an accessory structure would be 16 ft. based on this code requirement, this system would not meet the height requirement.

Mr. Wagner responded that if they shrink it down a row and extend the length, it would bring the height down 3 ½ feet.

Mr. McNamara noted that reducing the height by 3 ½ feet would still leave the total height over 17 ft., which is still above the maximum height allowed by the code. Mr. McNamara asked if they are able to bring it down another panel and extend the length by another panel. Mr. Wagner responded that they are only able to go 5 panels high, and that he would check whether they would be able to reduce the height by another panel, which would extend the length more. Mr. McNamara stated yes, but that would bring it to under 16 ft.

Mr. Bengart asked Mr. Wagner if he has the authority to answer that question tonight, or should the board table it. Mr. Wagner responded that he is going to need to find out whether it is something that is possible for them to be able to do.

Mr. Wagner requested to table Appeal No. 5. They wouldn't be able to install it until the spring, so there is plenty of time to continue to work on this.

Neighbor Notifications were sent out, with no comments received.

In regards to Public Participation, no one spoke.

Mr. Bengart noted that when tabling the appeal, the board should make clear their requests of the applicant, and what information they are seeking.

Mr. Bengart also stated that it would be beneficial for the applicant to be present himself when this appeal returns to the agenda.

Mrs. Burkard asked what is behind the applicant's property, Mr. Wagner responded that it is all wooded area.

ACTION:

Motion by Richard McNamara, seconded by Ryan Mills to table Appeal No. 5. with the following conditions:

1. homeowner to be present at next meeting for this item.

2. visual mitigation plan like a landscaping in order to reduce visibility from Conner Rd. as well as neighbors along the east perimeter.
3. configuration to reduce the height as low as possible, with a maximum of 16 ft. allowed by code.

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

MOTION CARRIED.

OUTSTANDING BUSINESS:

Motion by Patrick Krey, seconded by Ryan Mills, to **approve** the minutes of the meeting held on October 12, 2021.

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

MOTION CARRIED.

Motion by Patricia Burkard, seconded by Patrick Krey, to **approve** the minutes of the meeting held on November 11, 2021.

Patricia Burkard	Aye	Richard McNamara	Abstain	Raymond Skaine	Aye
Patrick Krey	Aye	Ryan Mills	Abstain		

MOTION CARRIED

Motion by Patrick Krey, seconded by Raymond Skaine to **adjourn** the meeting at 7:30 p.m.

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

MOTION CARRIED

Amy Major
Senior Clerk Typist