

Town of Clarence
 One Town Place, Clarence, NY
 Zoning Board of Appeals Minutes
 Tuesday January 8, 2019
 7:00 p.m.

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

Zoning Board of Appeals members present:

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

Zoning Board of Appeals absent member: Jonathan Hickey

Town Officials present:

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

Motion by Patricia Burkard, seconded by Ryan Mills, to **approve** the minutes of the meeting held on December 11, 2018, as written.

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

MOTION CARRIED.

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:01 p.m. The session ended at 7:14 p.m. and the Zoning Board of Appeals meeting opened.

Other interested parties present:

Arthur Fuerst	Nathanael Budde	Doug Whelan	Lauren Whelan
James Braun	Velma Szczesny	Louis Fiorella	Ryan Verity
Rev. Robert Zilliox	Mary Jo Aiken	Rusty Knight	Mark McAllister
Colleen Goodwin			

Old Business

Appeal No. 2 (from Dec 2018 meeting)

Arthur Fuerst
Residential Single Family

Requests the Board of Appeals approve and grant a 210' variance to allow a 300' front yard setback for the construction of a single family home located on the recently approved parcel, split from 9705 Clarence Center Road.

Appeal No. 2 is in variance to §229-52(A)(3) *allowable front yard setback of 90'.

DISCUSSION:

Neighbor notification forms are on file. Arthur Fuerst is present.

Chairman Michnik said at the last meeting the applicant was asked to provide updates and more information for this meeting. Mr. Fuerst said he staked the property as requested by the Board, he also had his wife print up four (4) designs that she likes, the printouts are on file. They are similar designs, a 1600 square foot ranch plus an attached garage. There are no other updates.

In response to Mr. Krey's question on the reason for the setback, Mr. Fuerst said it is to preserve as many trees as possible and to keep the privacy for the neighbors on each side.

Mrs. Burkard asked what the windows are for on what appears to be the second story if this is a ranch, Mr. Fuerst said the windows are just for looks. Mrs. Burkard went on to ask if it is a living space up there. Mr. Fuerst said they have not picked out a certain house but the Board wanted some idea so he submitted the pictures. When Mrs. Burkard visited the property she said the center area in the middle for the driveway has trees on it but it doesn't look like very much. Mr. Fuerst said they will bloom in the spring and fill in the space. Mrs. Burkard asked if the applicant is amenable to restrictions placed on the house if this request is granted. Mr. Fuerst said he is ok with a restriction on the size of the home.

Mr. Mills asked if the applicant would accept conditions stating that the house could not exceed 1600 square feet, the house would only be a ranch, and a limit of a 2-car garage, if the variance was approved. Mr. Fuerst said he would accept those conditions. Mr. Mills asked if the applicant would also be amenable to condition of the approval rescinding the prior variance for the pole barn on the property. Mr. Fuerst accepts that condition as well. Mr. Mills asked if the condition that a building permit must be issued within 1 year of the date of the granting of the variance is acceptable to the applicant, to which Mr. Fuerst replied he would like 2 years.

Chairman Michnik said the placement of the house changes the character of the neighborhood. Setbacks are put in place for a reason and he thinks it is important for them to be followed, especially in the quaint hamlet part of the town that this is located in. He is not comfortable doing a huge driveway all the way back there. He asked if the applicant has explored the cost of any of this, he has seen others pay \$40,000 for a similar situation with the driveway, the gas, the electric, etc. He is not happy with the request. He thanked the applicant for submitting the pictures.

Mr. Mills asked the applicant if he would sell the additional parcel if the request was denied. Mr. Fuerst said yes he would sell it. Mr. Fuerst confirmed that he will not have to remove any trees to put the proposed driveway in, the utilities would run along the roadway.

ACTION:

Motion by Ryan Mills, seconded by Patrick Krey, to **approve** Appeal No. 2 under Old Business as written with the following conditions:

- the structure that is going on the parcel be limited to a maximum of 1600 square feet in size, plus the maximum amount of garage space is to be a standard two-car attached garage.
- the structure be limited in nature to ranch-style construction, no living space on the second floor.
- a building permit be issued within 18 months of approval of this variance request.
- the prior variances that were granted to this parcel and the neighboring parcel that is owned by this applicant be rescinded.
- no trees, foliage, shrubbery, etc. be disturbed or removed during the construction process.

ON THE QUESTION:

The applicant’s testimony, and per site visits, indicate that the property is well shielded on all sides by foliage, the amount of trees and foliage on the site would not have to be disturbed if the structure is set back. The applicant is amenable to the condition that no trees, foliage, shrubbery, etc. be disturbed or removed during the construction process.

Mr. Krey said he is usually opposed to house being set so far back because they look unsightly but due to the trees and foliage on this property he feels that mitigates the fact that the house is set so far back. The trees on the lot help to preserve the privacy for the neighbors, so with the conditions that are proposed he will vote yes.

Chairman Michnik asked if the condition for the garage is for an attached or detached garage. Mr. Mills said he envisioned an attached garage but it will have to comply with the Building Code. It is confirmed that the condition will be for an attached garage and Mr. Fuerst is ok with this condition.

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

MOTION CARRIED.

New Business

Appeal No. 1

C. Douglas Whelan
Residential Single Family

Requests the Board of Appeals approve and grant variance to allow a detached accessory structure within the front yard setback at 9094 Winding Creek Lane.

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

DISCUSSION:

There are two (2) neighbor notification forms on file.

Mr. Whelan is present and said he is moving from Akron to Clarence Center. He owns a shed and wants to move it to the Clarence Center property. He went to obtain a permit and was told the only legal place he could place it would be in the center of his back yard. There is a drainage area in the back and the yard is sloped. He tried to pick another spot which is on the side of his house and behind the pine trees, and he was willing to add more trees around the shed. He was told that location is considered his front yard because he is on a corner lot and you cannot put a shed in your front yard. So his only option is to ask for a variance. The location that is legal is actually the worst spot because it would be very close to the house and would be visible to everyone, he does not want to place it there.

In response to Mrs. Burkard's question as to why he needs the shed, Mr. Whelan said he will use it for storage of items such as snow blower and a power washer. He currently has a three-car garage. Mrs. Burkard asked if he is willing to put more landscaping around it to camouflage it from everyone else, he said yes. Mrs. Burkard asked if there are other sheds in the neighborhood, Mr. Whelan said he saw one at 9073 Winding Creek Lane, but he did not look around to see if there are others.

Mr. Mills reads Exhibit A, a letter from Karen Strozyk dated January 7, 2019, into the record. The letter notes that she resides at 8766 Stonebriar Drive and asked that this request not be approved. Ron and Karen Strozyk believe that it will create an unsightly view not only from their property but to the entrance of the Stone Creek Development. Exhibit B is from Amy Persons dated January 7, 2019 who also opposes the request, she feels it would be a detriment to the integrity of the neighborhood and possibly decrease home values, she asked that it not be permitted. Exhibit C is a handwritten letter from Louis and Mary Ellen Fiorella dated January 7, 2019 stating that they are opposed to the erection of the shed, it would be an eyesore to the neighborhood. Exhibit D is a letter from Frank and Velma Szczesny of 9093 Winding Creek Lane dated January 7, 2019 stating that they strongly disapprove of putting a big shed on that property it will detract from the neighborhood and lower valuations. Exhibit E is a letter dated January 7, 2019 from James and Patricia Braun, of 6260 Creekbend Court, who state they are also opposed to the variance, it is not well thought out, it would be unsightly and potentially harm the property value in the Stone Creek Development. All exhibits are on file.

Mr. Mills asked if the applicant would have to bring in fill to place the shed in the back yard. He would probably build up the back with timber, but he thinks the shed would be an eye sore back there. Mr. Mills said he could do landscaping around that to mitigate the view. The Whelan's have owned the house since October 2018. It has a three-car garage with a full basement.

Mr. Krey asked about a base for the shed. Mr. Whelan said he would do a stone base and it would cost \$700 to put it on the side. He does not know how much it would cost to put it in the back because he does not want to put it there, he doesn't think his neighbors would like it there.

Chairman Michnik asked what the applicant would do with the shed if this request is denied. Mr. Whelan said he closes on his house within a week, he has the Heritage Company lined up to move the shed to Medina for \$250, he would then sell it from there. The person purchasing the house originally did not want it, but now will buy it for \$2000, it is a \$5000 shed. He has owned the shed for six (6) years. He was on the Zoning Board in Akron for 20 years, so he knows the various things they need to deal with. Mr. Whelan said he thinks the shed is worth \$3500, it is 12' x 16'. He does not want to create controversy. Lauren Whelan, daughter, is present and said there will be more cars and that's why they need the shed for storage. Deputy Town Attorney Steven Bengart asked the applicant if he has determined if there are any deed restrictions or a Home Owners Association with rules and regulations that would stop him from doing this, Mr. Whelan said he has not. Deputy Town Attorney Steven Bengart suggested he look into it.

Chairman Michnik asked how far off the patio the shed would be if he placed it in there. Mr. Whelan said it would be adjacent to his patio, the yard is not that big. If it is placed in the proposed location the long edge of the shed would be parallel to Heise Road and up against the shrubs. The doors would be looking west, into the yard.

Jim Braun, of 6260 Creekbend Court, is alarmed because the Stonecreek Development is a very nice development and the Whelan's live at the entrance and a shed there would be awful, it is an incredible detractor from the neighborhood. He said there is a deed restriction that does not allow sheds in the neighborhood. Mr. Braun confirmed that the deed restriction includes the property that the Whelan's own. Mr. Braun explained that they do not have a Home Owners Association but they do have deed restrictions. He read from the deed restriction, "It is expressly understood that said Stonecreek Subdivision has been plotted and laid out as a choice and attractive residential district and that these covenants and restrictions are made for the benefit of the lots contained in said subdivision and are said to run with the land and shall inure to the benefit of and be binding on all parties or persons claiming." He went on to say that there are no free standing sheds allowed. Mr. Braun would vigorously oppose this if a variance was granted. It effects the tax assessments and it effects the property values, Chairman Michnik said he has heard many people say this but no one has yet to prove it.

Velma Szczesny is the original owner of the house across the street, she was given the deed restrictions when she bought the house and has always abided by them. She does not want to see something like this go up. Mr. Whelan said no one gave him the deed restriction.

Louis Fiorella lives across the street and said he would be looking at this from every vantage point of his home, and it is not something he wishes to look at. But he also understands the applicants feeling of being a new homeowner. When he bought his home 5 years ago he did not receive a copy of the deed restrictions either. It is a beautiful neighborhood and they want to keep it that way.

Mr. Krey asked if the applicant is amenable to tabling the request tonight to give him the opportunity to look into the deed restrictions and reconsider what he is requesting.

Deputy Town Attorney Steven Bengart noted that the deed restrictions have nothing to do with the Zoning Board of Appeals. He suggested that the applicant ask for the request to be tabled to allow him (the applicant) to make sure there is a deed restriction. Mr. Whelan agreed.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **table** Appeal No. 1.

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

MOTION CARRIED.

Appeal No. 2

St. Mary's School/Ryan Verity
Traditional Neighborhood District

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow an LED message board sign within the Traditional Neighborhood District.
- 2.) A 13 square foot variance to allow a 33 square foot freestanding sign within the Traditional Neighborhood District.

Both requests apply to 6919 Transit Road.

Appeal No. 2 request 1.) is in variance to §181-3(D)(5), request 2.) is in variance to §181-3(D)(2).

Chairman Michnik recused himself from the meeting and left the dais, appropriate paperwork is on file with the Town Clerk's Office. Vice-Chairman Ryan Mills will preside over the meeting.

DISCUSSION:

Ryan Verity, Pastor Robert Zilliox, and Principal Mary Jo Aiken are present along with the sellers of the LED sign Rusty Knight and his partner.

Father Bob said the sign in front of the school has been significantly weathered and it makes it difficult for what it needs to do, it is also difficult to maintain. To keep up with the 21st century to have an updated sign would be beneficial. The sign does not reflect the state-of-the-art the school has come to. You have to be in front of the school to see the existing sign, this makes it difficult to promote events. A single-sided sign does not serve the purpose, the sign should have two (2) sides. The benefits of the sign outweigh the detriments of any health, safety and welfare. The sign, as it is, is a bigger challenge to stop and read what it says instead of driving and being able to see it, the direction of the sign needs to be changed, this is a benefit to the community.

There is one unsigned neighbor notification form on file, it was sent certified mail but was returned to the applicant undeliverable. The applicant knows who owns the neighboring property but has had no communication with that neighbor regarding the variance. Mr. Mills asked if the applicant has heard from anyone else as to what their position might be on this variance request. Mr. Verity said he thinks the position is a good thing for them, they need to stay competitive. The current sign was built in the 1960's, they need to update it. What they are proposing will not impact the traffic on Transit Road because the sign set back 55' from the road and is horizontal, it is geared more for people who are pulling into St. Mary's. Mr. Mills asked Mr. Verity if he has any reason to believe that the neighbor at 6855 Transit Road is not in favor of the request. Mr. Verity said no, the neighboring property will not be effected by the sign at all.

Mr. Mills referred to the second part of the request and asked if there is anyway the applicant can decrease the size of the sign and still meet his objective. Rusty Knight said yes the sign could be decreased in height by one foot but it would decrease the amount of text that can be displayed. It would be a 2-lined LED sign instead of 3 lines of text. Mr. Knight said you could shrink the static. Mr. Mills asked if the sign could be brought down a foot and brought in a foot, Mr. Knight thinks yes. Ms. Aiken said they would be significantly limited in the messages that they put out if the size of the sign was decreased. They want to use the existing brick base and put some landscaping around it. The current size of the sign is very well suited to the site along with the poles that are on the base. Mark McAllister said the problem with making the sign a bit narrower is that it limits the amount of characters in each line and it won't be as easy to read as a wider sign. Mr. Verity noted that the proposed sign is actually a decrease in size from what they

currently have. There are different functionalities of the sign that the applicant is willing to do, such as dimming the lights. The church has been in the district since 1849 and has done a lot for the community and will continue to do so. Mr. Verity is the business manager for the school.

Mrs. Burkard asked if the sign will be a single color. Ms. Aiken said that is the original proposal, however the color display that was submitted to the Board this evening is a more subtle display and they like that better. Mr. Mills clarified that the Code allows for one (1) color, which is monochrome. The sign will be used for seasonal things, fundraisers, publicize their Open House and inspirational sayings. The cost will be between \$15,000 and \$17,000. This will not come at the cost of the parish, there are a few benefactors who have provided the funds.

Mr. McNamara asked if the decrease in the sign size is being taken from the top of the existing sign, Mr. Verity said yes.

ACTION:

Motion by Ryan Mills, seconded by Patrick Krey, to **approve** Appeal No. 2 with the condition that the applicant provide landscaping around the sign structure. The landscaping will be left to the discretion of St. Mary's School. The landscaping is to be done within six (6) months of the approval.

ON THE QUESTION:

Mr. Krey said the reason he is voting to approve the request is because the new sign is comparable in size to the old, it is actually smaller than the old sign. It is not producing an undesirable change in the community, it does not alter the essential character of the neighborhood, it is in keeping with other signs in the area. As stated by the school, the hardship in fixing the original older sign outweighs any concerns about building a new one.

Mr. Mills noted that the fact that the sign is set so far back from the road is also a distinguishing factor that is different from other LED sign requests that the Board has heard. The location of the sign has been described via the testimony of the applicant and a site inspection.

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

MOTION CARRIED.

Chairman Michnik returned to the dais.

Appeal No. 3

Colleen & Geoffrey Goodwin
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow an accessory structure not having similar materials and features of the principle structure at 9650 Clarence Center Road

Appeal No. 3 is in variance to §229-55(F).

DISCUSSION:

There are two (2) neighbor notification forms on file. The neighbor notification form was also left at four (4) other addresses but no one was home at those addresses.

Mrs. Goodwin is present and said she wants to put a garage/pole barn there, it has already been purchased. Before she made the purchase she talked to the Building Department, she has done a lot of work at that property. She asked the building inspector for advice in putting up the pole barn, he told her that it has to be 10' away from the house, 10' away from the neighbors, but never said anything about the structure's roof being different than the house. The pole barn has been sitting on Tom Kelkenberg's property since October 2018. She did not realize this stipulation at the time of purchase, although she did try and get all the facts before she made the purchase, this was unexpected. She does not know of anyone who is against her request.

Mr. McNamara asked what color the siding will be on the garage. Mrs. Goodwin said it will be light grey vinyl siding and a steel roof. The pole barn will be placed off Fairlane Drive. There will be electricity in the pole barn. The principle structure has light blue siding which is impossible to match, they went with a color that would be complimentary. The steel roof would be a charcoal grey, which matches the roof on the house. It is Mrs. Goodwin's testimony that the pole barn will be close in color to the house. There will be charcoal grey shutters on the house and the pole barn to tie it all together. The garage doors will probably be white. The property is currently a rental property.

The applicant closed on the property September 30, 2017 and has been working on it and updating it since they bought it. Mrs. Goodwin has talked to her neighbors, they are friendly and they are aware that the property is a rental. She has not heard any objections from the neighbors about the material of the pole barn. There is a stone driveway and eventually a poured driveway will be installed.

Mrs. Burkard referred to the upper right elevation of the elevation drawings that shows an 8' by 8' door and asked what that door is for. So there can be lot storage in back of the garage for items such as lawnmowers.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 3, as written with the condition that the structure be clad with vinyl siding.

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

MOTION CARRIED.

Meeting adjourned at 8:25 p.m.

Carolyn Delgato
Senior Clerk Typist