

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday October 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
Jonathan Hickey Patrick Krey (Arrived at 7:11)

Town Officials present:

Assistant Director of Community Development Jonathan Bleuer
Town Attorney Lawrence Meckler
Councilman Paul Shear

Other interested parties present: Dan Singer Tom Driscoll

Motion by Richard McNamara, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on September 10, 2019 as written.

Jonathan Hickey Aye Richard McNamara Aye
Patricia Burkard Aye Ryan Mills 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 7:11 p.m. and the Zoning Board of Appeals meeting opened.

Old Business

Appeal No. 2 (from July 12, 2016 meeting)

Dan Singer
Residential Single Family

Requests the Board of Appeals approve and grant:
1.) A 366 square foot variance to allow a 2766 square foot detached accessory structure.
2.) A 3' variance to allow a 19' tall detached accessory structure.
3.) A 1' variance to allow 10' tall overhead doors on the detached accessory structure.
All requests apply to 5510 Old Goodrich Road.

Appeal No. 2 is in variance to 1.) §229-55 (H) *Previous ZBA approval for 2,400 square foot on 7/12/16.

- 2.) §229-55 (E)(2).
- 3.) §229-55 (I).

DISCUSSION:

Dan Singer is present. There are three (3) neighbor notification forms on file. Mr. Singer wrote and asked these neighbors to sign a document that stated, "We the undersigned are not in opposition to the construction of a 36' x 60' building with a height of 18'6" high pole building located at 5510 Old Goodrich Road by Dan Singer. We are also not in opposition to the building having 10' x 60' overhang on the north side of the pole building. We are also not opposed to the building having four garage doors which would measure 9'6" wide by 10' high." The document is on file. Mr. Singer noted that two years ago he applied for a 48' by 72' pole building, but was actually approved for a 40' by 60', at that time he spoke with all the neighbors down Old Goodrich Road, Thompson Road and Roll Road, there was no opposition. It has taken him a couple years to come up with the funds. He talked to Tom Kelkenberg and said he wanted to put up a 36' by 60' with three (3) overhead doors and one on the side. He has a John Deere tractor with a closed cab and a beacon. The reason for the height is because he needs a 12' wall to put in 10' doors. The purpose of the large overhang is to be able to store his tractor outside in the summer and to put up a swing for his grandson. The plans were submitted to the Town approximately five (5) weeks ago, Mr. Singer was then notified that the square footage was off. Mr. Callahan confirmed with Joe of the Building Department, then advised Mr. Singer that the overhang counts as square footage.

Mr. Singer went on to say that there is a building at 5500 that is 75' wide, 40' deep and that does not include the 10' overhang, which is visible from the street. The front overhang is 10' by 75'. The sidewalls are 25' high, and the peak is 30'-34' high. There is a 10' overhead door on the front and the back of the structure. There are buildings across the street from Mr. Singer which show that his request would not be out of character for the neighborhood. Mr. Singer submitted paperwork labelled Exhibit A, which included photos of surrounding buildings, the paperwork is on file. There are evergreens that shield the house from 5512 Old Goodrich Road. Another photo shows neighboring property with a roller blading track on it, that property is landlocked. Another photo shows property to the west and that property owner was not in opposition to what Mr. Singer originally proposed, but he could not contact him regarding this request after numerous attempts. The building and steel are already on site. He spoke with Tommy Kelkenberg and if Mr. Singer can't get the variance to go up to 9' on the doors then the steel on the front of the building doesn't work. As far as the overhang, he just didn't know it would be part of the square footage. Tommy gave him a ballpark of \$6,000. He does not think anything was discussed as far as the height of the building at the last meeting.

Mr. Hickey read the minutes from 2016 and got some background on the project. He asked if Mr. Singer could possibly do anything smaller and/or within code, notwithstanding the two (2) new issues. Mr. Singer said the problem is that he already ordered the four (4) doors from Adams Door for over \$7,200.00 and he can't cancel the order. Mr. Singer said the structure will be for personal use only, no retail or wholesale operations. He has many personal vehicles that will be stored on the property that he, his wife and his daughter drive. The size of the doors impact the height of the building.

Mrs. Burkard asks for clarification on the location of the structure. Mr. Singer the building will start where the four (4) orange stakes were on the property, it will go back 60'. There will be electric for lights, etc.

Mr. McNamara asked if the applicant considered making the building shorter by about 8'. Mr. Singer said he needs the 60' depth to house the vehicles, plus his tractor is 9'4" in height. He wants to keep the door sizes consistent because he thinks it looks more aesthetically pleasing.

Ryan Mills asked about the aesthetics of the building. Mr. Singer said it will be medium gray walls, the roof and garage doors are black, if windows are put in they will be glass block. There will be 2' to 3' of landscaping all the way around the structure. There will be no stone or brick work on the structure.

Chairman Michnik voiced his concern with the size of the building and height of the doors. Another concern is that the applicant already has a single garage, an attached garage to the house, and a pool house. Mr. Singer said the pool house is used as a pool house when the pool is open, otherwise all his patio stuff is in there. The back garage would be for his lawnmower, tractor and his personal automobile. Chairman Michnik said there is another little building in the back and asked if Mr. Singer is willing to take that down. Mr. Singer said no because that is his man cave. Chairman Michnik said Mr. Singer is asking for three (3) stand-alone buildings, this is a huge variance. Chairman Michnik said there should be some give and take and Mr. Singer does not want to take down the small building in the back and wants another structure up that requires a variance. Chairman Michnik could see one 10' door and the two doors on the back be 8'. The applicant is now asking for a huge size, a variance was granted three years ago. Chairman Michnik does not know how long ago the applicant ordered the materials for the variance that was approved in 2016 but the applicant is not asking the Board of Appeals for an adjustment on his misjudgment. Chairman Michnik prefers that the applicant stick with what he had. The applicant has plenty of buildings where things are being stored, he is now asking for a huge variance

Mr. Hickey asked Mr. Singer his thoughts on bringing the request a little closer to code. Mr. Singer said currently the structure is at 2160 square feet without the overhang. He said he cannot cut the size of the building. He is concerned about the doors. He is approved for 9' doors and is asking for a foot more. He would prefer to cut back the overhang, Mr. McNamara said he cannot cut the trusses. Mr. Singer said the trusses are just for the building and then there is steel for the overhang.

Mr. McNamara explained that the building is 60 feet deep with 10' sections. The back three sections of the covered patio could be removed. That would bring it down to 2460 square feet which is 60' more than what was originally approved, the inside of the building stays the same at 36' by 60'. A 1' variance would also be needed for the doors. Once approved Mr. Singer said he will start construction right away.

Chairman Michnik pointed out that the applicant is asking for four (4) garage doors that are 10', he asked if Mr. Singer would be willing to give up one (1) of the three (3) front doors, Mr. Singer said it would be easier to move the vehicles around inside if he kept all three (3) doors in front and he thought it looked better. Chairman Michnik asked if Mr. Singer is willing to give up the back door, Mr. Singer said that is where he keeps the tractor in the winter, so he would like not to give it up. Chairman Michnik voiced his concern with all the extra outbuildings on the property because it doesn't look right and now he is asking for a huge exception to put a big building up. Mr. Singer said the building was already approved, the only difference is the overhang. Chairman Michnik clarified that the building was approved at 16' in height, not 19', it was also approved for standard doors, not 10' doors. Chairman Michnik said if the Board approves another variance would the applicant eliminate that extra freestanding building that is behind the pool storage building, because all the information that Mr. Singer provided indicated that whatever is in that building can now be stored in the newer bigger building. Mr. Singer said the purpose of that was to store his patio furniture.

Mr. McNamara asked if the applicant is willing to make the side door shorter, Mr. Singer said his tractor would not fit through a shorter door. There is a man door located on the right hand side. Mr. Singer then suggests that if the back door was left at 10' and two of the front doors could be reduced to 9', but leave the middle door at 10', this gives him the option to pull the tractor through the front or back.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 2 under Old Business as written except with respect to number 1 which is amended to read 2460 square footage for the detached accessory structure, which is 60' more than what was approved in 2016 (this by removing half of the proposed covered patio). This shall also be conditioned upon a 2' to 3' circumference of landscaping, as discussed, around the structure. Another condition is that there will not be any retail or wholesale business operated out of the structure. If the request is approved the work is to be completed within twelve months from today. There will be no second floor within the proposed structure.

ON THE QUESTION:

If the twelve month condition is not met, the variance will expire and the failure to complete the work will require the applicant to reapply in full for any variance. Mr. Hickey and Mr. Mills both agree to this.

Mr. Mills said in terms of the building being complete, the best way to quantify this would be to have a Certificate of Occupancy issued, Mr. Hickey agreed.

Mr. McNamara asked if items #2 and #3 of the request are approved as written, Mr. Hickey said yes.

Mr. Singer said Mr. Kelkenberg is ready to begin work as soon as the building permit is received, the only hold up would be weather.

Mr. Hickey noted that Mr. Singer's property is somewhat rare, the requested square footage is substantial. He does not believe the 1' door variance is substantial, nor is the height variance. Mr. Hickey said the applicant is in a section of town where the properties are well spread out and the proposed structure is going to be heavily secluded and hidden behind the main residence. There are also similar structures in his area. There is precedent being set here because this type variance and structure would not fly in many areas of town, but where the applicant is, it is not, on the whole, a substantial variance. Mr. Hickey does not think there is an adverse physical or environmental impact with this project. This is a self-created project, per the vehicles and amenities, but that type of issue outweighs all the other elements that are in Mr. Singers favor. He is a longtime resident and he intends to spend many more years there. With respect to feasible alternatives to accomplish these goals, the structure could be a little bit smaller, the applicant worked with the committee a little bit, maybe not entirely but enough to satisfy Mr. Hickey that the applicant is willing to compromise a little bit to find a feasible alternative.

Mr. Mills pointed out that the north, west and south sides of Mr. Singer's property are pretty well buffered with foliage that will prevent neighbor views of the structure. It is confirmed that there is no second floor within the structure, this condition is added to the motion and Mr. Hickey and Mr. Mills agree to it.

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

MOTION CARRIED.

New Business**Appeal No.**

Patrick and Susan Casilio
Residential Single Family

Requests the Board of Appeals approve and grant a 7' variance to allow a 5.5' side yard setback for the construction of an attached accessory structure (garage) located at 4434 Westwood Road.

Appeal No. 1 is in variance to §229-52 (B).

Jonathan Hickey recused himself from this agenda item and left the dais. The appropriate form is on file with the Town Clerk's Office.

DISCUSSION:

There is a letter on file from Patrick Casilio dated October 8, 2019 that states "Good morning, Tom Driscoll and/or Carolyn Vinci will be representing me at the ZBA meeting tonight. They are authorized to make decisions on my behalf".

There is one (1) neighbor notification form are on file. Patrick and Susan Casilio own the other adjoining property.

Mr. Driscoll is present and explained that they are looking to construct a single garage addition off the north side of the house. It would be a mirror image of the left-hand side, which is the south. There will be no trees or landscaping removed.

Mrs. Burkard said the property was not staked when she was there but Mrs. Casilio showed her where the proposed location is. It is confirmed that the big tree will not be taken down. All the materials will match the existing house, the brick and siding will match.

Mr. Krey noted there are two (2) trees and Mr. Driscoll said it will be very close. Mr. Krey also noted that there is currently a sidewalk along that side of the house and said that will probably not be extended. Mr. Driscoll said that is correct and went on to explain that the applicants may want it brought back down the side of the house in the future because it would provide access to the patio in the back.

Mr. McNamara asked about the interior wall between the existing garage and the proposed garage. Mr. Driscoll believes that just the man-door will be left, as it would be a separate entity.

Mr. Mills asked if the roof shingles will match, Mr. Driscoll said yes, it will look like it has always been there.

Chairman Michnik voiced his concern regarding the location of the structure being so close to the tree and said a footer is needed, Mr. Driscoll agreed and said there will be root damage. Chairman Michnik asked if the applicant would need a permit if he took down the tree. Mr. Bleuer clarified that a property owner can remove up to 10 trees on his/her property without a permit. Chairman Michnik said his concern is that everything matches, but Mr. Driscoll guaranteed that the brick and siding materials will match.

Mr. Krey asked the reason for the garage. Mr. Driscoll said it is for storage of the applicant's lawn tractor.

ACTION:

Motion by Patricia Burkard, seconded by Patrick Krey, to **approve** Appeal No. 1, as written.

ON THE QUESTION:

Mr. Krey does not believe the request will produce an undesirable change in the neighborhood, he does not believe it is a substantial variance, he thinks the benefit is greater to the applicant versus the detriment to the neighborhood. The addition is going to have the same appearance as the existing garage.

Mr. Mills said any adverse impact is mitigated by the fact that Mr. Casilio owns the full lot to the north of the structure.

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

MOTION CARRIED.

Meeting adjourned at 8:08 p.m.

Carolyn Delgato
Senior Clerk Typist