

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday October 9, 2018  
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

Town Officials present:

Director of Community Development James Callahan  
Town Attorney Lawrence Meckler  
Deputy Town Attorney Steven Bengart  
Councilman Paul Shear  
Councilman Chris Greene

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** the minutes of the meeting held on September 11, 2018, as written.

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

MOTION CARRIED.

Other interested parties present:

Ray Peters	Deborah Schwartz	Jean Van Kuren
Dale E. Van Kuren	Wendy Nunn	Heather Vallone
Brian Lampka		

**Old Business**

**Appeal No. 6** (from August 2018 Meeting)  
RSA Development LLC  
Restricted Business

Requests the Board of Appeals approve and grant a variance to allow a density of eight (8) residential units for the proposed multiple-family project located at 6449 Transit Road.

Appeal No. 6 is in variance to §229-126(D) \*Code allows up to six (6) residential units.

**DISCUSSION:**

Mr. Callahan noted that the applicant requested this agenda item be tabled. Mr. Mills said the Town received an e-mail from Russell Salvatore on Tuesday October 9, 2018 at 9:59am to Jonathan Bleuer stating, "We are tabling tonight's meeting for one last month as we are in negotiations to see if this works out. Thank-you, Russell".

**ACTION:**

Motion by Ryan Mills, seconded by Richard McNamara, to **table** Appeal No. 6 under Old Business.

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

MOTION CARRIED.

**New Business****Appeal No. 1**

Raymond Peters  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 164 square foot variance to allow a 364 square foot detached accessory structure located at 5441 Via Del Sole.

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

**DISCUSSION:**

There are four (4) neighbor notification forms on file. Raymond Peters is present and explained he recently had a pool installed and would like to have a pool house put in as well.

Mr. Mills asked for details on the materials to be used. Mr. Peters explained that the inner portion of the structure will have a stone façade. There will be electricity in the pool house and it will be inspected when it is complete. There will be no plumbing in the structure however he wants to have a hot/cold water spigot out there because they skate on the ice of the pond and this will help maintain it. The other side of the structure will be vinyl sided but he will be using a different color than what is on the house. Mr. Peters plans on re-siding the house in the future, and that siding will match the pool house.

Mrs. Burkard asked for confirmation that the neighbors do not have a problem with this request. Mr. Peters confirmed this. Mrs. Burkard asked if the proposed structure would block the view of the lake from the neighbors. Mr. Peters said no, it will not block the neighbors view, he will not build it high.

Mr. Hickey asked how high the structure will be. Mr. Peters said the wall will be 8' high, he will have an architect draw up plans. He will have a reputable contractor do the work. He has lived at his house for three (3) years. Mr. Hickey asked if there is an estimate on the cost of the project. Mr. Peters said approximately \$20,000. He will use stone, trusses, sheeted shingle siding and columns. Mr. Hickey asked if he looked at other sizes closer to what is allowed, Mr. Peters said yes but 200 square feet goes quick.

Chairman Michnik asked if the Board put a limit on the height would the applicant be ok with that. Mr. Peters said yes. The width of the building is 13'. Mr. McNamara said it will be a 6/12 pitch.

Mr. Mills asked for confirmation that there would be no need for a variance if the structure was not covered. Mr. Callahan confirmed that is correct.

There was discussion regarding a previous variance request that was granted for this address which was for an accessory structure but the applicant is not going forward with those plans.

### **ACTION:**

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

- that the structure not exceed 14' in height.
- the prior variance that was granted by this Board pertaining to 5441 Via Del Sole is rescinded, and the applicant understands and accepts this.

### **ON THE QUESTION:**

Mr. Hickey said Mr. Peters has explained in detail his anticipated project, he appears to be a long standing member of that community. This project will not be an undesirable change and will increase the value of his property and those surrounding him. There is no opposition from any neighbors. The project will be a positive impact on the physical surroundings and a non-impact to the environmental surroundings. In light of the property space and the surrounding yards and the community in this part of Town it is not a substantial variance.

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

MOTION CARRIED.

### **Appeal No. 2**

Deborah and Ronald Schwartz  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 5' variance to allow a 5' side yard setback for the construction of a detached accessory structure (emergency generator) located at 5565 Woodsedge Court.

Appeal No. 2 is in variance to §229-55(E)(1).

### **DISCUSSION:**

Deborah Schwartz is present. There are three (3) Neighbor Notification forms on file. Ms. Schwartz explained that she wants a whole house generator for emergencies. It will be tucked behind the air conditioning unit. There is not enough room to have 10' from the property line. The only way they can legally put it in is if she sealed off the glass block window, which she has done, this allows them to go as close as possible to the house.

Mr. Hickey asked if the applicant considered any other location on the property that would have been within code. Ms. Schwartz said yes, and went on to explain that the reason the plans for the extended patio were submitted is to show what they plan to do in the Spring, they want the lounge chairs to go on the patio instead of on the grass as depicted in Exhibit 2 on file. If the generator was placed in the yard there it would not be a good fit. Ms. Schwartz said she loses power quite often for 3-4 hours at a time. The generator will go on, as a test, once a week and she can control when it runs, she does not know how long it will run during the test. Buffalo Power Systems is the company she chose to do the work. They are currently in the process of doing the extended patio, the hot tub is there already and they will do screening work along the property line. She has lived at this address since 2001 and will live there for at least 10 more years.

Mrs. Burkard noted that the generator will not be seen from the road.

Mr. Mills noted that the neighbor has a generator on the same side of the house. Ms. Schwartz said the other neighbor has a whole house generator too.

Chairman Michnik asked how long the neighbor has lived there, Ms. Schwartz said they have been there at least as long as she has lived there. The generators on both sides of her went in right after the October storm. She did try a portable generator. Chairman Michnik voiced his concern questioning how the neighbors were able to have a generator installed.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written.

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

MOTION CARRIED.

#### **Appeal No. 3**

Jean & Dale Van Kuren  
Residential Single Family

Requests the Board of Appeals approve and grant a use variance to convert a garage into a single apartment at 5266 Old Goodrich Road.

Appeal No. 3 is in variance to §229-47.

#### **DISCUSSION:**

Jean and Dale Van Kuren are present. There are two (2) signed neighbor notification forms on file. Mr. Van Kuren said there is a ditch between his property and the property of the Willow Lake Court neighbor. He also spoke with John Hunt who lives across the street and he thought it would be a good idea. Mr. Van Kuren said they want to use the existing building just the way it is and remodel it for his daughter to live there.

Mrs. Burkard asked why the proposal is being called an apartment instead of a house. Mr. Van Kuren said he called it a garage apartment because it is an existing garage. He does not know what it will look like on the outside. They need to obtain the variance prior to hiring an architect. The property would definitely look better than what it looks like now. The structure is on a concrete pad. Mrs. Burkard asked if the

applicant will be getting rid of all the blacktop that surrounds the building. Mr. Van Kuren said they plan on adding some green space to the front of the property. They will probably brick-in one garage door on the front and the one on the south side of the building and create green space. Mrs. Burkard asked about the blacktop along Greiner Road, Mr. Van Kuren said they will get rid of a lot of it and make it look more like a house than a commercial building. They would put siding and/or brick on the building. It will be a 2-bedroom apartment. Mrs. Burkard asked what happens when the applicant's daughter decides not to live there anymore. Mr. Van Kuren has not looked that far into the future, it may become a rental unit then.

Mr. Hickey said he would like to see what the applicant is intending. Mr. Van Kuren said Mrs. Van Kuren's father bought the property in 1996, then deeded it over to Mrs. Van Kuren, at which time there was a tenant who stored vending machines at the property, before that it was a gas station. The Van Kuren's live at the four corners in Clarence Center. Mr. Hickey asked for details on the financials of the proposal, along with the tax value and the appraisal of the property. Mr. Van Kuren said the appraised value is approximately \$170,000, Mrs. Van Kuren's father bought it for \$115,000. The taxes are about \$4,000 a year. Mr. Callahan noted that the house is part of this parcel, so there is a home and this garage on one parcel. Mr. Van Kuren's son and daughter-in-law live in the existing house. Mr. Hickey asked if the applicant has thought about the cost of the project, what he might charge for rent or the financials when his daughter moves out. Mr. Van Kuren said they put \$20,000 into the roof already and will probably put another \$100,000 into the interior.

Mr. McNamara asked if the lot is splittable. Mr. Callahan said no. Mr. McNamara asked where the driveway would come in, Mr. Van Kuren said it will be at the south end of the building, closer to the house, on Old Goodrich Road. Mr. McNamara asked if the driveway could be shared. Mr. Van Kuren said there is an existing curb cut to the north end of the building, there is also a curb cut to access the garage on the south side. There is no sewer, so if they had to do a separate septic system for this building, they would do that. Mr. Van Kuren confirmed that the tanks from the gas station have been removed, he has a letter from the DEC indicating that the soil has been tested and was found to be ok.

Mr. Mills asked why this cannot be classified as single family. Mr. Callahan explained that it is zoned single family but the lot can't be split because it would not meet the size requirements. A permitted use would be an accessory garage. Mr. Mills agreed with Mr. Hickey's comments regarding wanting to see what the applicant is intending through renderings or elevations. He is also concerned with apartment zoning in that area. He asked if the applicant is aware of any other apartments in the vicinity, it seems to be all residential single family. Mr. Van Kuren said yes, he was just trying to figure the best use for what he has as far as making it look nicer for the neighborhood.

Chairman Michnik said he does not think the applicant is aware of what the cost would be to renovate that building. He agrees that the applicant needs to submit prints to the Board, showing greenspace as well, however that will not guarantee the Board will approve it. He is also concerned with when the daughter moves out there is no verification of who is in that building, so it may be rented in this residential single family community. There are a lot of variables that the Board loses control of. He wondered if the Town Attorneys can look into it to see if something can be formulated. Chairman Michnik will not move forward on his position until he looks at prints, greenspace and the letter from DEC stating there are no issues with this property. He is not in favor of apartments and also asked for cost estimates for the proposal. Erie County does not allow two (2) septic systems on one (1) lot. Chairman Michnik feels it is best to table this request and warns the applicants that they can still be denied even after they put more money and work into the proposal.

Mr. Van Kuren asked if he needs to hire an architect or can he draw up a plan. Chairman Michnik said he needs to submit architect's drawings so the applicant will have a better idea of what the cost will be, it is not a \$100,000 project. Mr. Van Kuren asked what other use could go there, currently it is a dilapidated building. Mr. Mills read the permitted uses from the Town Code §229-47: single-family dwelling, (which is essentially what is there now, the structure in question is an accessory structure), home occupations, cemetery, pre-existing agricultural operations, public utility facilities, public service utilities, park or playgrounds, schools, churches under 10,000 square feet. There are other uses permitted with a Special Exception Use Permit that would need approval by the Town Board. Town Attorney Larry Meckler explained that when the Town Board provides Special Exception Use Permits for secondary living units or in-law apartments it usually involves a restriction in the deed that it cannot be rented out to anyone other than family. Mr. Mills went on to read from the Code §229-48: Uses permitted with a Special Exception Use Permit (D) Secondary living units. The applicant needs to think about what they will use the structure for once their daughter moves out. Chairman Michnik asked if the applicant will have to provide proof that the person living in the unit is a relative every year when they go in for the permit. Mr. Callahan said the Town requires a deed restriction which is filed with the County and identifies that the unit is not for rent and will be used strictly for family.

### **ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **table** Appeal No. 3 for a month to allow the applicant time to gather more specifics per the discussion at this meeting regarding the proposal which will include but is not limited to the property dimensions, aesthetics, exterior, etc.

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

MOTION CARRIED.

### **Appeal No. 4**

Wendy Nunn  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 5' variance to allow a 5' side yard setback for the addition to an existing attached garage.
- 2.) A 66 square foot variance to allow a 782 square foot of total attached garage space.

Both requests relate to 8330 Ericson Drive.

Appeal No. 4 is in variance to:

- 1.) §229-52 (A)(4)(b) \*pre-existing side yard setback of 10'.
- 2.) §229-55 (D) \*40% of total area of principle structure=716 square feet.

### **DISCUSSION:**

There are two (2) neighbor notification forms on file. Ms. Nunn said they currently have a very narrow single-car garage and they need at least a double-car garage. The applicant said he has an F-150 and it doesn't fit in the garage. They would like to store both cars in the garage and incorporate a shed in the back so they can store equipment such as lawnmowers.

Mr. McNamara asked if the structure will match the house which is brick façade. Ms. Nunn said yes half way up will be brick, it might be hard to match because the house is so old. The brick will be removed from one side of the home prior to attaching the proposed garage. Siding will also be used on the proposed structure.

Mr. Mills asked if there is any other way the applicant can achieve this without building so close to the property line, he suggested going back farther and doing a tandem-type garage. The applicant said he provided the architect with the size measurements they wanted and he suggested this style. Currently, there is no out building on the property. He would like to keep the width of the structure as proposed, this will also provide room for future growth if they need it. The neighbors on either side have no problem with the request. There is interior work being done to the house currently.

Ms. Nunn said they closed on the house in July of this year. In response to Mr. Hickey's question, the applicant said by "future growth" he means Ms. Nunn would like to buy a larger vehicle in the future. No one else lives in the house with them.

The applicant said there is a window on the side of the house where the garage will be built, it will be closed off.

Chairman Michnik asked if the applicant is looking to flip the house. The applicant said no, they plan to stay there. Chairman Michnik asked if they could go with a smaller garage. The applicant said he would really rather not, Ms. Nunn wants a larger vehicle and he will continue to own a truck. Chairman Michnik is concerned with the size of the structure, he asked again if the width in the front of the structure could be smaller. Mr. Hickey is also concerned with the size and the location being so close to the property line. The applicants do not have an estimate on the cost of the project yet. Currently, they have invested \$35,000 into the interior renovations.

Mr. McNamara asked how far the structure will be from the house that is on the property to the east of the applicant. The applicant explained there is 5' to the neighbor's property line, there are trees on the property line then it's about 45' to the house. Ms. Nunn said their house is 1800 square feet, with a full basement. The applicant said the proposed structure will add value to the property. He went on to say there is a chimney that extends into the existing garage about 4' and it takes up a lot of space in the garage. The chimney is why they can't do one full bay.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Richard McNamara, to **approve** Appeal No. 4, as written.

#### **ON THE QUESTION:**

Mr. Hickey said with respect to the size, it is not substantial and will not have any adverse impact. With respect to difficulty, the applicant knew what they were buying; however, the other factors outweigh this. The applicant has outlined compelling reasons that there is no feasible alternative, in light of the way the property and home and current garage are constructed, to accomplish what they desire. Mr. Hickey does not find the 5' variance substantial.

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

MOTION CARRIED.

### Appeal No. 5

Heather Vallone  
Residential Single Family

Requests the Board of Appeals approve and grant a 5' variance to allow a 5' setback between a pool and a proposed addition to the principle structure located at 5162 Eastbrooke Place.

Appeal No. 5 is in variance to §196-3(C).

### **DISCUSSION:**

There are two (2) neighbor notification forms on file. Mr. Mills said the Town received two (2) e-mails one from Joe and Laura Saraceno of 5152 Eastbrooke Place dated October 8, 2018, a second from Don and Sue Gibson of 5172 Eastbrooke Place dated October 6, 2018, both read as follows: "We live next door to Paul and Heather Vallone who live at 5162 Eastbrooke Place, Clarence, NY. We are writing in reference to item 5 at October 9, 2018 Zoning Board Meeting. We are aware that the Vallone's desire to add an addition onto their patio. The addition will not infringe on our property or negatively affect our property. We feel the addition will enhance all the surrounding property values, including ours, and we are in favor of the request for a variance to permit the addition." A copy of both e-mails are on file.

Mrs. Vallone said they spend a lot of time outside, they currently have a deck and a gazebo. They want more than an awning to shade them from the sun, something permanent. Brian Lampka is the contractor and he is present.

Mrs. Vallone has lived there since 2004 with her husband and one son, her other two children are away at college. Mr. Hickey asked if the applicant has contemplated other options that would not require a variance but accomplish what they are looking to do. Mrs. Vallone said the reason it went out is because the ground is down three feet, the deck is level and they would need a three foot landing for the step-down and then there would be steps so they just pushed it out because there would not be much room in front of the stairs for the patio, and they went away from the pool. The estimated cost of the project is \$20,000. Mr. Hickey asked for details on the materials to be used. Mr. Lampka said it will be a wood frame with vinyl soffit on the underside, vinyl siding on the peak, roofing to match the existing roofing on the house. The posts will be 6" by 6" vinyl wrapped post that come down to three masonry bases. It is an open porch roof.

Mrs. Burkard asked how far it is from the bottom step of the house to the pool. It is clarified that those steps are well away from the pool, it is the outside corner post that is 5' from the step. It is also clarified that there are steps that enter into the pool.

Mr. Mills asked if the fence will be moved. Mrs. Vallone said yes, they will bring it around the rest of the yard. Mr. Callahan confirmed that if this was not covered there would be no issue, it's just because it is covered that a variance is needed. Mr. Mills referred to the Town Code §196-3(C) which reads, "...the existing grade of the property should not be altered within five (5) feet of the property line. The pool shall be located at least ten (10) feet from the rear or side of a dwelling."



Mrs. Vallone said the hot tub will be removed, so there will be one level. Chairman Michnik asked what the applicant will do if the Board does not approve the request. Mrs. Vallone said they would have to re-think everything. Chairman Michnik asked if the poles could be moved. Mr. Lampka said they are already at the far corner of the house, Mrs. Vallone is trying to accomplish the same amount of space out there as she is used to having. Mr. Lampka said if it is shifted to be 10' away when you come out of the house you will not be under the porch. Mr. Mills suggested keeping the footprint of the roof but change the structure, the columns could be set back. Mr. Lampka said you couldn't cantilever the way the roofline would be built.

Mr. Meckler asked if the roof blocks any sight lines in order to be able to see the pool, even from the second story of the house. Mrs. Vallone said no, there are no blocked sight lines to the pool.

Chairman Michnik asked for confirmation that the applicant cannot extend the roof line any farther to the opposite side, Mr. Lampka said that is correct, they are trying to keep it away from the pool. Chairman Michnik asked if the applicant added a fourth post could they come in more on the one that is closest to the pool. Mr. Lampka said that would probably not work structurally. An architect drew up the plans that were submitted with the application.

**ACTION:**

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 5, as written.

**ON THE QUESTION:**

Mr. Mills said there is testimony from the applicant and the contractor regarding the construction techniques. The fact that this is not a solid wall and there will be no solid walls along the structure. The columns will be 6" by 6" which is deemed to interact with the Town Code §196-3. Based on the applicant's testimony the columns will not impair any sight lines or make anyone not aware of the nearby pool

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

**MOTION CARRIED.**

Meeting adjourned at 8:29 p.m.

Carolyn Delgato  
Senior Clerk Typist