

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday November 10, 2020  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:01 p.m.

Zoning Board of Appeals members present:

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

Town Officials present:

Director of Community Development Jonathan Bleuer  
Deputy Town Attorney Steven Bengart  
Councilman Paul Shear

Other interested parties present:

Samantha Hughes	Braeden Hughes	Jenn Richter
Laura Zaepfel	Al Weber	Olga Kislynk
Jennifer Beale	Michael Zawadzki	Darren Longo
Brendan Biddlecom	Sarah Biddlecom	Patricia Barcroft
Lon Barcroft	Jens Richter	Jason Zimadahl
Kara Husband		

Motion by Richard McNamara, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on October 13, 2020, as written.

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

MOTION CARRIED.

At 7:03 p.m. the meeting went in to Attorney-Client privilege.

Regular meeting resumed at 7:21 p.m.

**Old Business**

**Appeal No. 1** (From October 2020 Meeting)

Samantha Rae Hughes  
Residential Single Family

Applicant requests a variance of:

- 1.) 30' to allow a 15' rear yard setback;
- 2.) 10' to allow a 35' front yard setback;

For the construction of a single family home located at 4775 Boncrest Drive East.

Appeal No. 1 is in variance to 1) §229-52 (C)  
2) §229-52 (A) (1)

\*Amended from October request of 20' rear and 38' front setbacks.

Neighbor notifications on file from previous request.

Ryan Mills recused himself from Appeal No. 1

**DISCUSSION**

Ms. Hughes stated that previously when she was in for the variance request, there was a question about what the new build would look like. They sent in a potential "mock up" of what their goal is for that. Additionally, there was a question about the Highway Department and their allowance of the two curb cuts for the roundabout driveway. They received confirmation and a letter of approval for that, as well as the Erie County Health Department approval for the septic system, which is good until April, 2021.

Mr. McNamara stated that at the last meeting he had a few questions regarding the septic, plans, etc. He had requested plans for the septic. Ms. Hughes stated that right now as it stands, because the plans of the home and what it will look like has been updated from a ranch to a two-story, or split level as depicted in the photo. That is dependent on a variance going through, so they have not done the plans or incurred that cost until they knew whether the variance would go through or not.

Mr. McNamara asked about the curb-cut, the letter from highway – it's just the rules for doing a curb cut, not permission to have them.

Jens Richter stated that he spoke with Jamie at the Highway Dept., and he signed the entire thing, he believes they included copies of the signature. Mr. McNamara stated that he is aware of the document that Jamie Dussing signed that was included in the packet dated October 15<sup>th</sup>, which is simply the rules for a curb cut. Mr. Richter replied that there are two pages, he does have the other page with him. Jon Bleuer stated that the second page is actually the reduced site plan. Mr. Richter said that yes, the site plan is the second page, which Jamie did also sign. Discussion continued regarding the paperwork that was on file and signed by Jamie Dussing. None of it appears to be giving permission for curb cuts, only the rules and an updated site plan.

Mr. McNamara asked about the backyard fence, Ms. Hughes stated that she did bring some photos that show either a wooden fence that would allow some privacy, or a natural barrier fence, consisting of shrubs that would give some privacy as well. There is a large septic tank that divides the backyards, Mr. Richter stated that he would prefer to have a natural fence installed rather than a wooden one. Mr. Richter will be building the house himself. Mr. McNamara asked how big the house will be, it appears to be a split ranch. Mr. Richter said that it will be 2500 sq. ft. with a 500 sq. ft. for the garage.

Mr. Michnik marked the pictures that Mr. Richter turned in numbers 1-6, and will have the board members review them.

Mr. Krey noted correspondence that had been received by Scott Switzer, of 8607 Bonview Terrace, which expresses his concerns for the project. Mr. Krey asked Ms. Hughes whether she has reached out to Mr. Switzer to discuss his concerns. Ms. Hughes stated that she did not contact Mr. Switzer, but rather has provided visual evidence of what the house will look like in the proposed setting.

Mr. Krey asked Mr. Richter if since his will be purchasing the home, if they made the fence a condition, whether he'd be ok abiding by that. He stated that he'd prefer a natural fence, but if the board approves it with the condition of a fence, Mr. Richter would agree to the condition.

Mrs. Burkard stated that she had originally requested a picture. It is a very up to date raised ranch, it's beautiful. She wants to make sure that the house that is built matches the photos that were presented to the board.

Mrs. Burkard also asked about the letter that Mr. Switzer (neighbor) submitted stating his concerns with the house not fitting in the current neighborhood, and whether or not he has seen this photo of what the house will look like. Mr. Richter stated that no, he has not.

Mr. Skaine asked whether Mr. Richter has contacted the office building on Sheridan Dr. to see if they have a preference for the type of barrier. Ms. Hughes stated that they have not contacted them, but when they were here last month, they mentioned that either a wood fence or shrub barrier would be preferable. Either of those options they would be ok with. Mr. Skaine stated that because the deer are so prevalent in that area, they would be replacing the natural / shrub barriers often. He would prefer a more substantial barrier that couldn't be destroyed by animals. Mr. Richter stated that his house that he currently lives in has a lot of deer, and they don't touch the shrubs he has. Mr. Richter provided a photo of the bushes he is referring to for reference. Mr. Skaine asked how high they get, Mr. Richter replied that they vary in height. Mr. Skaine said he'd personally still rather see something more substantial.

Ms. Hughes stated that they are looking for a 35' setback all around the front part. Then along the two sides would be a 15' setback.

Mr. Michnik stated that they previously asked for information about the two curb cuts. They had been asked to bring information back regarding these, and whether or not they are allowed. He doesn't believe he has enough information on this, based on what they brought back for this meeting. They've provided paperwork that they have spoken to someone about that, but nothing regarding an approval. Mr. Dussing would need to go out to the property to inspect and then give his approval, and at this point, they don't have that information.

Mr. Michnik also stated that it appears work has been done on the property in the back corner, as far as clearing trees. Ms. Hughes responded that the far back corner which appears to be on their property, is actually the neighbor's property.

Mr. Michnik said that he doesn't believe the information or plans that were submitted are adequate. The pictures are beautiful, but they have no way of knowing that will be exactly how the house will end up. He doesn't believe the lot is capable of handling a house of the proposed size. Mr. Richter stated that he does indeed plan on making the house look as it is in the photos. Mr. Michnik explained where the doubt comes from, in terms of experience in the business, and seeing how things have occurred in the past. Mr. Michnik doesn't feel that the information presented is strong enough to be able to make a positive or negative decision.

Mr. Skaine stated that he doesn't believe Mr. Dussing would have signed the paperwork regarding curb cuts had he thought there was a problem. He thinks Jamie explained how the curb cuts need to be put in. He feels that he signed the paper in order to cut the process down. In his letter he states "contingent on a building permit received". He feels that if the curb cut isn't put in properly, then the house won't be able to be built. He feels that Mr. Dussing was basically saying that once the building permit is approved, then the driveway can be put in with the curb cuts. If it's not done correctly, then you cannot do the foundation. That is how Mr. Skaine is reading the paperwork that was submitted.

Referring to No. 2 on the sheet where he had the applicants sign it, agreeing to all of the conditions which she will be held liable to.

Mr. Michnik stated that they can both look at the same sentence, and come up with different interpretations.

Mr. Michnik has no further questions at this point, but he reiterated the fact that he feels some of the information brought back to the board was good, while some of it missed the point on what they asked them for. He commented on the septic, reminding them that the septic field will not be raised, it will be ground level. So when he talks about adding a septic tank, it will not be above level, it won't be seen and it won't raise the elevation.

He feels that the fence situation is still an open situation, there was no commitment on the applicant's end.

The area that they are proposing the house, is an older area with older homes, so it's not comparable to the other setbacks and homes in the area.

Pat Krey asked in regards to the rear yard, Mr. Skaine mentioned he prefers fencing to shrubbery, are we talking about just fencing the back of the home? Mr. Richter stated that because of the office building that sits on Sheridan Dr., he will put up fencing along that side. Mr. Krey reiterated that fencing would be installed along the north side of the home, facing the parking lot.

Mr. McNamara asked Mr. Richter if he'd be willing to put in a 6' fence in the back, to which he replied yes he would.

Mr. Michnik asked whether anything would be put in along the east side. Mr. Richter responded that currently there are many trees there. Mr. Michnik stated that eventually there will be new drainage installed, and a lot of what is there currently will be cleaned up. If that were to happen, does Mr. Richter have plans to plant anything along the east side of the building?

Mr. Michnik stated that he is concerned that once the drainage ditch is rerouted, there will need to be something back there to give some privacy for the neighbor to the east. Is Mr. Richter willing to install a fence in that area to protect both him and his neighbor? Mr. Richter stated yes, he is.

Mr. Krey stated that with the variance, there won't be much room available to utilize, therefore 6' fencing would be preferred.

**ACTION:**

Motion by Patrick Krey, second by Raymond Skaine to **approve** Appeal No. 1 under Old Business with the following conditions:

- the applicant lines the north and east side of the property with 6' fencing.
- the two curb cuts are approved by the Highway Department.

### **ON THE QUESTION:**

Patrick Krey stated that he is approving this appeal due to the presentation that it will not be an undesirable change in the neighborhood, based on the home being similar in size and appearance to other homes in area, as shown in Exhibit 7. Also, when he went to the site, the pictures of the house that are shown, he believes it will fit nicely in to the neighborhood.

Also, he thinks the concerns of the neighbors have been addressed.

Patrick Krey	Aye	Richard McNamara	Aye	Patricia Burkard	Aye
Raymond Skaine	Aye	Daniel Michnik	Nay		

MOTION CARRIED

### **New Business**

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

Laura Zaepfel  
Residential Single Family

Applicant requests a variance of:

- 1.) 1,003 sqft to allow a 1,203 sqft detached accessory structure;
- 2.) 5.5' to allow a 21.5' tall detached accessory structure;

Located at 4660 Greenbriar Road.

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

### **DISCUSSION:**

Neighbor notifications are on file.

Ms. Zaepfel stated that she brought her architect with her, who will cover some specifics. Basically she is looking for a detached structure. It is simply a mini house to the side of the pool for changing. There is a mini kitchenette and some seating as well. Less than half of it is actually enclosed, it is just a roof covering the open area.

She believes the height was the other issue, so they designed something that is more aesthetically similar, to the structure of the house. It is the open roof line that extends over the limit that is allowed currently in the town.

Olga Kislynk, architect for Ms. Zaepfel, explained that although it is a significant variance for the area, most of it will be open with just a cover, with an enclosed section towards the back of the house.

She noted that Ms. Zaepfel contacted the neighbors, and has received letters of approval to place the building where they have planned.

Mr. Michnik stated that they have a neighbor notification from 4663 Hedgewood, asking that the evergreen border that was installed be placed over the lot line. Ms. Zaepfel stated that they needed to remove some Ash trees, so her plan is to plant an evergreen border around the property with a wood fence in front of it, facing inward, towards the house. The neighbor's main concern is on the opposite side, there is a young family with multiple children, so she would like a border. Ms. Zaepfel showed her a photo of what she's planning to put in. Ms. Zaepfel shared this photo with the board members.

Ms Kislynk said that she explained to the neighbor, that the trees are not 6' tall when planted.

For the record, the photo mentioned was labeled Exhibit 1.

Also for the record, Mr. Mills has returned, and Mr. Krey is back to being an alternate.

Mr. McNamara noted that Ms. Zaepfel had an addition put on the house, as well as a pool put in, she's now asking for the variance. He asked why she is requesting this now, rather than before the pool was installed. Mrs. Zaepfel said that she came in June or July and tried to get in, but wasn't able to. She has been trying to have a pool put in for the past year, but wasn't able to get on the schedule. The pool was separate from this building, neither were contingent on the other.

Beauty Pools is installing her pool.

Mr. Skaine asked if the height of the proposed building is to be able to keep it in conformity. There won't be anything on the second level, it is for storage purposes only. The dormers on the right are false, there is nothing behind that. The ceiling will either be cathedral, or a flat ceiling. The changing room will be on the first floor, looking at the site plan, it will be on the back right corner.

Mrs. Burkard questioned that it will be a kitchen and a changing room, Ms. Zaepfel responded that it's not actually a kitchen, it's more of a kitchenette with a microwave, little refrigerator, etc. Mrs. Burkard asked if there would be a wet bar, Ms. Zaepfel replied yes a wet bar with a table top. Mrs. Burkard stated that there will be electricity running to the building, Ms. Zaepfel confirmed yes. Mrs. Burkard asked if they will be using it in the winter time, Ms. Zaepfel responded no. Mrs. Burkard noted that the area for the planned building is right next to the pool.

Mr. Mills asked how the materials they plan to use will be tied in to the materials used on the primary structure. Ms. Kislynk said that the primary structure has a mixture of some stone, some horizontal lap siding, some lattice work in the gables, and then an actual roof. They are using the same style of materials and possibly the same colors for the pool house. Stone on the first floor, the same kind of lattice molding in the gables, with a shingle roof. The siding will be vinyl, which Mr. Mills pointed out won't match the house, since the house is lap siding. Mr. Mills noted that a copy of the exterior elevations (A 2.0 for the record) were provided, he asked if they had the architectural drawings with them, Ms. Kislynk said that no, they do not. Mr. Mills asked if they did have them, they would reveal just the kitchen space, and that space. Ms. Kislynk said that yes, if you're looking at the floor plan, along the left side is the wet bar and the kitchenette – referring to the front elevation, No. 1 on A 2.0. The wet bar will open up and there will be seating. The countertops will wrap around to provide a kitchenette. To the right of that is the seating area. There will be a folding door, and the windows will be folding as well. In the summertime it will be

very open. Mr. Mills asked if there are any other designated spaces besides the bathroom and kitchen, Ms. Kislynk reiterated that there's a bathroom with a changing area, kitchen, a pool equipment storage area as well. Also, a storage area on the second floor for cushions, etc.

Mr. Mills asked what the square footage of the principal residence is, Ms. Zaepfel responded that it is around 5500 sq. ft. He then asked what the sq. footage of the proposed structure is, Ms. Kislynk stated that the structure itself will be 1200 sq. ft., but the enclosed section will be approximately 550 sq. ft.

Mr. Mills asked in regards to the character of the neighborhood, can they identify other homes that have similarly sized structures? Ms. Zaepfel stated that right next door, which for the record is 4640 Greenbriar, as well as two other houses right in her area.

Mr. Michnik asked when they anticipate starting the project, Ms. Kislynk said that because of the weather, she doesn't think they'll get in to it this season. They're hoping to get at least the foundation in before the snow falls, but it will be weather dependent. Logically, she doesn't think they'll be able to start until next spring.

Mr. Michnik asked if there will be all grass around it, or do they plan to put any other sort of border around? Ms. Zaepfel replied that most of it will be grass, and she plans on putting a fence in that will border the property and will come around to where the driveway is, so there will be all grass in there.

#### **ACTION:**

Motion by Raymond Skaine, second by Dan Michnik to **approve** Appeal No. 1 as written.

Raymond Skaine	Aye	Patricia Burkard	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

MOTION CARRIED

#### **Appeal No. 2**

Jennifer Beale  
Residential Single Family  
& Traditional Neighborhood District

Applicant requests a variance to allow chickens on a property less than 5 acres in size at 10919 Main Street.

Appeal No. 2 is in variance to §229-47 & §229-58

#### **DISCUSSION:**

Neighbor Notifications on file.

Ms. Beale stated that she is looking to be able to keep her chickens on less than 5 acres.

Three items were read in to the record and are on file:

- Notice of Complaint – Permitted Uses – TND, Section 229-57 – 8/26/2020
- Notice of Complaint – Permitted Uses – TND, Section 229-57 - 8/14/2020
- Memo to Steven Leising from Jennifer Beale re: Notice of Complaint

Mrs. Burkard asked how many chickens they have, Ms. Beale responded 12. Mrs. Burkard stated that they had said they use them for the food that they supply, which is just the eggs, Ms. Beale confirmed just eggs. Mrs. Burkard asked if they are ever out of that area, Ms. Beale replied no. Mrs. Burkard asked what the other fence in the area is for, Ms. Beale responded it is for puppies. Mrs. Burkard asked if they're different types of chickens, Ms. Beale responded yes.

Mr. McNamara asked how long they have had the chickens, Ms. Beale responded since the beginning of Covid, so March. He asked whether she talked to the town at all about having chickens, to which she responded she did not. She stated that prior to having them this time, she had them when they first moved in for two years, with no problem, in approximately 2009-2010. Ms. Beale also stated that prior to them moving in, the people that owned the property prior to them also owned chickens.

Jon Bleuer stated changes to the code for chickens occurred back in 2005.

Mr. Mills noted that on the initial application, Ms. Beale indicated that the reason for having the chickens is that they are their pets, and that their children have become very attached to them through the struggles of Covid-19, they also enjoy the food they supply, they're clean, have vaccines and no parasites. He asked if they would elaborate on this some more. They are not selling any of the chickens, or their eggs, both to which Ms. Beale responded no.

Mr. Mills asked if there was anything additional that Ms. Beale would like to add. She stated that their kids love the chickens. This year has been such a struggle, they are learning a lot from the chickens as far as responsibility, egg cycle, and they just love them. It is like a zen place where they can go to sit and enjoy the chickens, including the neighbors on both sides of them.

Mr. Michnik asked if there was a rooster with the chickens, Ms. Beale responded no. He then noted that he stopped by on Sunday, and counted almost 15 chickens in the enclosed area. The other concern he has is whether they got a permit for the coop, to which Ms. Beale responded that she did not. Mr. Michnik noted that there's a possibility that's a problem as well.

He said that when he was there to look at the coop, she also had quite a few puppies in an enclosure as well. Ms. Beale stated that is her business. Mr. Michnik asked if she has a business certificate, Ms. Beale responded that she does. Mr. Michnik asked if she can run a business out of that location, Ms. Beale stated that she is not sure what that means, but that she does have a DBA. Mr. Michnik asked if the town is aware that she is doing business from there. Ms. Beale responded that the dog warden is, she doesn't know who else there is to tell.

Mr. Michnik asked how many litters a year she has, Ms. Beale said it completely depends, and it's not possible to give an example. Mr. Michnik asked how long she's been raising puppies, Ms. Beale replied as a business, for three years. Further questioning regarding the size of the litters that Ms. Beale's dogs have continued. For the record, Mr. Zawardski also spoke, stating they currently have litters of four and ten.

Mr. Michnik continued, stating he has a concern with the chickens, and the puppies, and everything else that is happening on the property. Referencing what Mr. Mills read in to record three statements about the property. What the difference is, they don't have 5 acres there to have the chickens, and also stating that they are raising the chickens because the kids like them, but there is no proof stating that is a true



statement. Additionally, his question is, they have the chickens without a permit, they have the coop without a permit, how long they've been doing it, he is unsure.

He has concerns because the laws of the Town of Clarence are established for a particular reason, and people should know what the laws are, and unfortunately, they found out about it. He is concerned about having the chickens there, they are not in the business of having people "just do what they want to do" then come back to the board and ask for permission.

Mr. Zawardski said that when they originally did this, their intentions were not to go against any laws. They didn't check to see if it was illegal, or against town code. Mr. Michnik stated that it appears to be pretty established between the fence and the coop. Mr. Zawardski reiterated that they didn't do it with the intentions of not abiding by or avoiding the town's codes. They didn't place it behind a barn or out of sight from the town or anyone else, it's sitting out in plain sight for everyone.

Ms. Beale stated that they live less than a mile from Kreher's egg farm, so she never even considered the fact that they weren't able to keep chickens. There's multiple people with chickens within a mile of her house that aren't on 5 acres of land. She was under the impression that Clarence is a "Right to Farm" community, and had she known otherwise, she never would have done it. Then Covid hit, and she thought it would be something fun for her kids to do, since they were locked inside the house, they have five kids.

Mr. Michnik stated that the chickens appear to be pretty big, Ms. Beale said that she has receipts showing when they purchased the eggs. Mr. Michnik stated that the receipts should be put on record. Ms. Beale stated that they have only been alive since March. She does not have the receipts with her, but she would be happy to email them to anyone. She paid \$1500 to have the chicken coop moved in, people thought she was also raising chickens to save on the cost of eggs, but if they were laying eggs for the next 300 years she wouldn't save any money. They are using a system for the inside of the coop for the bedding, and a layer system for the outside of the coop. There is no smell, they don't make noise, and they are less intrusive than the neighbor's dog that barks. Mr. Michnik stated that dogs and cats are approved in traditional neighborhoods, to which Ms. Beale responded her point she is trying to make is that they make less noise than a barking dog.

Mr. Michnik said he would like to have the receipt sent over to have on record, and reiterating that when he was there, he counted more than 12 chickens.

Mrs. Burkard stated that she also counted the chickens, and there were 15 of them. She asked why they had so many. Ms. Beale stated that they were all different types, and that when you get them you cannot request only girls. When she ordered them, she got rid of the roosters, so as to not cause problems. In order to get all the different kinds. They all have different personalities.

Mrs. Burkard said that she went to a talk at Kreher's farms a while ago, she learned that each chicken lays one egg a day, and is that true with Ms. Beale's chickens? Mrs. Beale said no, that they may eventually be able to lay an egg every other day, but they are babies. The only ones currently laying are her Easter Eggers.

Mrs. Burkard stated that her issue is that the town developed a code, of which she is looking for approval of, but which they didn't follow. If they allow this, then that means anyone can have chickens, not abiding by the town's code. She did not make the code, but feels it should be followed. To give Ms. Beale

permission to go against the code, is like saying we don't have a code anymore, and wouldn't prevent anyone else from having chickens in their yard.

Ms. Beale said she does understand this, and she feels it's time for Clarence to reevaluate this code. The City of Buffalo allows chickens, as does Lancaster on lots smaller than hers. She has letters from neighbors stating how they see her children enjoying the chickens, and playing with them. Mr. Michnik said that these will be placed in to record.

Mr. Michnik asked if they do have 15 chickens, Ms. Beale replied that she does not have 15 chickens.

Mr. Mills read the two neighbor letters in to the record, they will be on file.

Mr. Skaine asked why they got rid of their original chickens back in 2009-2010, Ms. Beale replied that she had a high-risk pregnancy and was not allowed out of bed to take care of them. Mr. Skaine noted that 11 years later she then decided to try again, Ms. Beale replied that Covid had a lot to do with it.

Mr. Michnik said he is going to follow up on what Mrs. Burkard said in regards to the laws of the Town of Clarence. They are established for a reason, and if they allow everyone to do what they want, as she stated, then there is no purpose to the laws and regulations to be enforced. He has a concern about this. Originally she had said she does want the eggs, and now she's adding about the children. Ms. Beale said that they were originally for her children. Mr. Zawardski stated that he has put in a lot of time for the coop, the landscaping, etc. Mr. Michnik reiterated that he feels the laws are in place for a reason, and as Ms. Beale said, she didn't know the laws when she got the chickens, but that is not the board's problem.

NO MOTION

REQUEST DENIED

### **Appeal No. 3**

Brendan & Sarah Biddlecom  
Residential Single Family

Applicant requests a variance to allow chickens on a property less than 5 acres in size at 9550 Maple Street.

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

### **DISCUSSION**

Neighbor notifications are on file.

Upon request, Brendan Biddlecom gave reference as to where the properties are from the neighbor notifications in regards to his property. They are the neighbor directly to their west, and then their neighbor behind them.

Mr. Biddlecom stated that they are looking to keep 6 therapeutic chickens on their property. They are in an enclosed coop with a chicken fence around that coop as well. They are hoping to keep the chickens for that purpose and that purpose only. They are not being raised for eggs, agricultural, or economic purposes.

Mr. Michnik asked if the address 9540 is to the west of their property, Mr. Biddlecom said yes that is their neighbor. Mr. Michnik clarified that the Elm street notification are the neighbors right behind their property.

Mr. Skaine asked why they are referring to them as therapeutic chickens. Mr. Biddlecom said he can submit for the record the letter from the psychiatrist that treats his son, verifying he is under her care. His son has a variety of mental health issues, which he is in treatment for. It was decided he loves animals, they could have a dog, but due to Covid they have a lot of extra free time. Typically they are a very busy family, but they had extra time, so they made the decision to purchase these animals, and raise them in the backyard. To have the experience of being responsible for animals as well. They have two other children, one of whom is also interested in the chickens. They provide value to them in that sense.

Mr. Skaine asked when they first got the chickens, Mr. Biddlecom replied that it was late April.

Mr. McNamara asked if they've had chickens before, to which Mr. Biddlecom responded that yes about nine years ago they did, but their kids were all very young back then. Mr. Biddlecom said he's not trying to excuse their ignorance of the law, but certainly one of their reasons with not moving forward sooner, was simply that they didn't have the time do so previously, was the interaction that they had with Animal Control at that point. They live about a block away from Animal Control, which patrols their area often. At one time, they may have stopped by because their former dog was barking, and the chickens were there. Mr. Biddlecom stated that he asked if there was anything they could do additionally, and Animal Control asked if they had any roosters, Mr. Biddlecom replied no, then they asked how many they had, Mr. Biddlecom said back then they also had six. Animal Control responded that from his perspective they're just pets, he thinks they're fine, and Mr. Biddlecom never heard anything additional. Certainly their interactions with town officials at that point in time led them to believe that there wasn't anything on record. This interaction took place in approximately 2010 or 2011.

Mr. Mills read items in to the record, which are on file:

- Notice of Complaint – Permitted Uses – Residential Single Family, Section 229-47
- Documentary evidence from Endeavor Health Services

A follow up question regarding Exhibit 2, it does not specifically mention anything regarding chickens being therapeutic in nature regarding this particular patient. Mr. Mills asked if they have any documentary evidence specifically medical that makes that cause of connection to the chickens themselves providing a therapeutic benefit to the patient. Mr. Biddlecom responded no, they do not.

Mr. Michnik stated that again, this goes back to the rules and regulations. The laws are set up for a particular reason. He noted that the Biddlecoms live in a nice, quiet community. He is convinced that the rules are set up as rules to comply with, and when we don't comply within the rules and regulations we could be driving down Maple going 90mph, but we cannot, because it's a rule that we abide by. He is totally by the book on this, and does appreciate all of the work that they put in to everything, but again simply, the law does not allow them, they need to be on a certain size parcel. What may have happened in the past they cannot rectify, they can only rectify what is happening now and in the future.

Mr. Michnik asked how many chickens they have, Mr. Biddlecom responded that they have six. Mr. Biddlecom stated that he understands this is code, and they are truly not trying to defy the rules, but if you could see the actual character and value that these birds actual add to the neighborhood, he thinks the nuance outside of the law, may impact their decision making, especially in this time. There are multiple grandmothers that bring their grandchildren down the street just to see the chickens. People will literally stand outside their fence while out on a walk just to watch their chickens. Young nieces and nephews that are over all of the time, both he and his wife are fortunate enough to be able to work from home, so they are able to babysit the nieces and nephews while their parents work. They are the most popular house to go to because of the chickens. So yes his son is getting the direct benefit from them because he has noted mental health issues, but it is providing a true tangible benefit to everybody that sees these birds. They are loved not by just his family, but by neighbors and extended family as well. He understands the code, and the process that the board needs to go through with it, they are trying to be very mindful of the negative impact that they could have on their neighborhood and changing the character, because they love Clarence Center for the same reasons Mr. Michnik described. Very "Norman Rockwell-esque" as his grandfather used to say. They are doing everything that they can especially now that they know that they are in violation of the

code to be good neighbors. They have pine bedding that absorbs any kind of smell, they have limited numbers, they keep them fenced in, and they have a beautiful coop that adds architectural value to the property as well. It was designed by an award winning architect and designer, and built for them for this purpose. Again, he understands what they are up against and asking, but he truly believes that there are some nuances that they should take in to consideration.

Mr. Michnik asked if they got a permit to have the chicken coop, Mr. Biddlecom responded that it is a 4x4 coop so it is his understanding that something that size doesn't require a permit. Mr. Michnik referred to Mr. Bleuer, Mr. Bleuer replied that he is not aware of that, it is the Building Department.

Mr. Skaine stated that he would like to see further documentation from the applicant that this is in fact one of the reasons why this is helping their son. He would like to see this tabled for a month and come back with some further documentation from the counselor.

Mr. Michnik noted that it would have to strictly state what they are looking for. Again, he feels that with their location on the corner, in the hamlet of Clarence Center, he firmly believes that the rules state they can't have them there. The exception is yes it's nice for all of the reasons that Mr. Biddlecom stated, but what if something happens along the way – an accident to them, or someone comes after them because a chicken bit them or something similar. He has concerns with where it is located, as well as accessibility.

Mrs. Burkard asked if they received neighbor notifications across the street on Elm from 6065 and 6055, as they are right across from the animals. Mr. Biddlecom said no, they appeared with what they were told to have. Mrs. Burkard agreed that she would also like further proof that they are truly benefiting their son. She asked if they've had any issues with them being so close to the sidewalk, Mr. Biddlecom said that no, and after he became aware that they were in violation of the code, he attempted to see what other towns were doing in this respect, things like being 15' away from the property line, having additional security features in place, everything that he could think of which follows code in Williamsville or East Aurora, or any other place which are similar to what Clarence Center looks like with its aesthetic features and the neighborhood makeup. There is a separate almost deer fence that they put up around it that adds a layer of protection.

Mr. Michnik asked about Mr. Biddlecom's reference to East Aurora and Williamsville, and asked if he could give proof of chickens in the village of East Aurora and the Village of Williamsville. Mr. Biddlecom stated that absolutely he can. Both of those locations have a code, Clarence does not which is why there's a violation.

Mr. Biddlecom noted that those villages have gone through similar things and conversations, and with two variance requests in one night for the ZBA, he believes it is an indicator that there are many others who are in the same boat. He recognizes that is not a discussion for this evening, but this is not outside the realm of reasonableness. Now that he's needed to, he's looked at the laws, and he feels they're reasonable, and well done. Making sure there is certain clearance from a property line, that nobody is bringing in roosters, keeping the numbers down to 6 or less, certain sanitary requirements, as is seen in the City of Buffalo, East Aurora, and Williamsville. He thinks the town itself is probably sitting on an untapped revenue stream, it can be done well if it's done right. A chicken can bite you, but he's been attacked by neighbor's dogs on multiple occasions. The worst thing a chicken can do is peck at you, and cause a lot less damage than even what a little poodle would do.

Mr. Michnik asked how big their lot is, Mr. Biddlecom replied that it is approximately 60x160 sq. ft.

#### **ACTION:**

Motion by Raymond Skaine to **table** the appeal until further information is returned which supports what the counselor is treating the individual for. Second by Ryan Mills.

Richard McNamara    Aye                      Ryan Mills                      Aye                      Patricia Burkard                      Aye

Raymond Skaine      Aye                      Daniel Michnik              Aye

**MOTION CARRIED**

**Appeal No. 4**

Patricia & Lon Barcroft  
Residential Single Family

Applicant requests a variance:  
1.) to allow a secondary garage; and  
2.) of 184 sqft to allow a 384 sqft detached garage;  
Located at 4655 Schurr Road.

Appeal No. 4 is in variance to §229-55 (H)

**DISCUSSION:**

Neighbor notifications on file.

Mr. Barcroft stated that they are looking to erect a detached garage 16' x 24'. They currently have three vehicles and a two car attached garage, and it has become a nuisance to deal with the extra car in the driveway. They would like to entertain the idea of putting a 1.5 car garage up so that they can put the third vehicle in it.

Mrs. Burkard asked whether they have considered attaching it to the house. Mr. Barcroft stated that there is not enough swing space because it's not a front approach garage, it's a side approach. He referred to a project that came before the ZBA board a few months ago, they can't do that because there's not enough swing space to get the cars around. Mrs. Burkard asked if there was any way they could put a breezeway or something in between to connect them, but Mr. Barcroft said they had thought about it but it turns out having the same problem, the plan is to have the garage 12 ft. back from the current house. To bring it up again still would be a stretch because it would be corner to corner and he doesn't know how he'd attach those two. He gave the contractor a sample of the siding that they have currently on the house, as well as a sample of the roofing shingles. He told the contractor that they want it to look identical to the house. Additionally, he showed the contractor their windows that they had replaced recently, and asked him to make sure that the two double hung windows look just like the ones that are in the house.

Mr. Skaine stated that he was out that and was quite pleased with the way they had it lined up. He had the same question that Mrs. Burkard did about attaching it, and Mr. Barcroft showed him why it wasn't an option.

Mr. Mills read in to the record an email received from a neighbor, in regards to the variance as Exhibit #1. Mr. Barcroft stated that of all the neighbors, she would be the only one that would actually see the garage, as she is located behind (to the south) of their property.

Mr. Michnik asked if they were to approve this, would Mr. Barcroft be willing to plant some kind of evergreen along that side at his property line. Mr. Barcroft said they would be happy to landscape it so that it would be a nicer view for her.

**ACTION:**

Motion by Patricia Burkard, second by Raymond Skaine to **approve** Appeal #4 as written, with the addition of the following condition:

- landscaping on the south side of the building

Richard McNamara      Aye                      Ryan Mills              Aye                      Patricia Burkard              Aye  
Raymond Skaine      Aye                      Daniel Michnik              Aye

## MOTION CARRIED

**Appeal No. 5**

Kara & Jason Zimdahl  
Residential Single Family

Applicant requests a variance of 2' to allow a 6' fence within the front yard setback at 4695 Brentwood Drive.

Appeal No. 5 is in variance to §101-3 (C) (2)

**DISCUSSION:**

Neighbor notifications are on file.

Mr. Michnik asked for explanation on the location of the neighbor notifications in relation to their property. Jason Zimdahl explained that he didn't realize he only needed to notify the neighbors touching their property, so he notified a number of extra neighbors, including the ones that drive by their house from down the street as well as those that would actually view the fence.

Mr. Michnik asked why they installed a fence before obtaining a permit, and a 6' fence. Mrs. Zimdahl explained that they have two little boys that are 2 ½ years old, and with Covid and not leaving the house, they spent a lot of time outside, and she couldn't let them even come close to the road. They have a lot of toys, and she thought it would be nicer for neighbors to look at a fence rather than seeing all of the toys strewn across the yard. When they get older and want to play sports outside, and she can decorate it for the holidays, it just made sense and was a good safety measure right now. They play sports in the side yard now, she has girls over that she coaches, they help her with the kids and she helps them with coaching sports, and they don't have to worry about cars getting hit that are driving by.

Mr. Skaine stated that it is his understanding that they were aware that a 6' fence was not permitted. Mrs. Zimdahl replied that she had an idea it shouldn't be more than 4 ft., she had the opportunity at that time to put it up. She stated that if she was told to take it down then she would, but was hoping that they wouldn't. Mr. Skaine asked when she contacted the town regarding the height of their fence. Mr. Zimdahl responded that it was mostly a reaction. He doesn't know the date that he called the town. Most of what he had done was a reaction to what he was told needed to be done. Once he contacted to find out about the permit for the fence, he reacted to the fence manufacturer that told he needed to get a permit, and he was under the impression that the manufacturer was taking care of that. So he called to get the fence permit, and then was told that what they were going to do with the fence was over code.

Mr. Skaine asked when they contacted the builder to put in the fence, or when the fence was installed. Mrs. Zimdahl responded that she believes mid-August is when it was installed.

Jon Bleuer referenced the Zoning letter that was sent out and documented that the office received the phone call from the applicant on August 10, 2010. A notice of violation was sent out on October 6<sup>th</sup> which was the result of a zoning inspection on September 22, 2020.

Mr. Zimdahl stated that the installer had already started putting the poles in when he informed Mr. Zimdahl that he need to go get the permit, because the installer did not.

Mr. Skaine noted that at that point they could have ceased installation and not built a 6 ft. fence. Mr. Zimdahl said that the installer told them at that point that if he had to stop, he would move on to the next job, and they would need to wait another two years to have it finished.

Mr. Skaine asked if even though the materials were purchased, and the Zimdahl's responded that the installer told them he would take those materials to his next job.

Mr. Skaine stated that their neighbor to the north has a 4' fence, and Mr. Zimdahl said that is how they found out about the variance process, because their neighbor told them there is a variance process they need to go through, and he wishes he had done that because he wishes his fence was 6 ft. also.

Mr. Mills read in to record three documents marked Exhibit 1, 2 and 3 that were received by the town.

Mrs. Burkard stated that she understands their concern about their boys remaining in the fenced in area, and totally agrees with that, but she does not understand why they couldn't achieve that with a 4 ft. fence. She knows they mentioned people not seeing all of the toys and stuff, but walking along there and there's a 4 ft. fence, she doesn't feel anyone would be able to see much anyway. Mrs. Zimdahl stated she thinks it's more with the boys playing sports, and she knows that will happen, she thinks it is more dangerous to have a lower fence. If they hit a ball or play other sports and it goes over the fence and hits a car that would be a major concern. On top of that, they have 2 dogs she would be afraid would jump a 4 ft. fence.

Mr. Zimdahl noted that with some of the neighbor notifications of the people across the street, they're also friends so they have been inside the house, they have discussed the look of the fence, and they were much happier with that due to the view. He said that it is really more about the danger that can happen, and the stuff that accumulates with boys. The neighbors can only see the patio from their properties, not the toys and other items. Mr. Zimdahl specifically asked if anyone had an issue with the look of the fence, and there was some discussion about bringing in some shrubbery and items of that nature, but he has become a little nervous after this whole process, of putting any trees or shrubbery in. His understanding of the 6ft. rule was the line of sight. So that they cars and pedestrians can see one another coming around the curb and it would pose less danger. That is why it is setback almost 25ft. is so that you can see all oncoming traffic and a better reaction time for pedestrians and cars. Mrs. Burkard asked if they plan on leaving it the same color, Mr. Zimdahl stated that you have to wait a year before you can paint it.

Mr. Michnik asked if they are running a business out of their property, Mrs. Zimdahl replied that when she gives lessons she sometimes just does them helps the girls to pitch, Mr. Michnik responded that she is running some type of schooling, Mrs. Zimdahl replied that she wouldn't call it schooling, she would call it friends that come over and she teaches them how to pitch. Mr. Michnik stated that he was there on Sunday, and as he was there, there appeared to be more and more cars pulling up. She had people throwing balls back and forth, she had buckets marked with different numbers on them. He has a concern that there is some type of business out of the building, or training, and with a 6 ft. fence they can hide easier behind it. Mr. Michnik asked once again, and Mrs. Zimdahl said she wouldn't call it a business. She has coached in the past and she has people who know her, who ask for lessons, so she gives them lessons, but wouldn't call it a business. Mr. Michnik rephrased his question and asked if she has other people come in for training that she works with. Mrs. Zimdahl responded yes. Mr. Michnik said that there is an issue with cars being in the area. Mrs. Zimdahl said that before the fence was there she did it in the front yard. Mr. Zimdahl stated that the only reason it's been in the front yard is because of Covid. Originally when she's coaching at ECC, the girls just go to ECC. Mr. Michnik stated that any way you call it, it is a business out of there, or training, etc. Mrs. Zimdahl said that she wasn't aware she couldn't have the girls come over so she could help them.

NO MOTION

REQUEST DENIED

Motion made by Patricia Burkard, second by Richard McNamara to **adjourn** the meeting at 9:14 p.m.

Amy Major  
Senior Clerk Typist

This meeting will be taped.