

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday November 14, 2017
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
David D'Amato	Patricia Burkard
Richard McNamara	Jonathan Hickey

Town Officials present:

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

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on October 10, 2017, as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	David D'Amato	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:

David Ganschow	Sandra Baker	Timothy Banker	Ryan Glaser
Robert Glaser	Ryan Glaser	Jack Thomann	Joseph Miano
E. McCallister	R. DiNatale	Brian Panzer	Michele Panzer
Julie McCullough	Angelo Maritato	Mark Jann	Tricia Maritato

Old Business

Appeal No. 5(from Sept and Oct 2017)

David Ganschow
Residential Single Family

Requests the Board of Appeals approve and grant a 624 square foot variance to allow a 1,344 square foot detached accessory structure located at 6055 Railroad Street.

Appeal No. 5 is in variance to §229-55 (D).

DISCUSSION:

Deputy Town Attorney Steve Bengart noted that the applicant has already been before the board and a decision has already been made. To have a rehearing it requires a change in the application, the applicant has not changed anything in the application. Deputy Town Attorney Steve Bengart understands that the applicant is asking for clarification on the board and batten versus the vinyl. Mr. Ganschow said that is correct. Deputy Town Attorney Steve Bengart said the applicant will be allowed five (5) minutes to explain why the change, then the Board can choose to do something or not.

Mr. Ganschow explained that he wanted the metal building for cost purposes versus the vinyl. At the time there was over a \$7,000 difference. He went with board and batten under the assumption that the cost would be similar to the metal, although he hadn't explored it before last month's meeting. He had the project requoted in board and batten and found that the cost was going to be closer to vinyl than metal. He has to remove the overhang. People on this board at the last meeting were pushing for vinyl. He was not going to do the vinyl because of the cost, but if board and batten is going to be close in cost he would rather not deal with the maintenance of board and batten if he can do vinyl. They want the structure to match the house, the vinyl would match the house exactly. He went on to say that his contractors lowered the cost by \$1300 but he was unaware of that when he came to the last meeting or he would have presented his case differently. Between the lowering of the cost and the removal of the overhang it made the vinyl much more palatable. He was unaware of how to proceed so he called the Town and was advised to go back to this Board. He would like the motion from the last meeting to have the words, "or vinyl" added after "board and batten". Mr. Ganschow said based on the discussions of the last two meetings he was at the vinyl would have been a better proposal anyway.

Mrs. Burkard asked how long the proposed structure is, Mr. Ganschow said it is 54'.

The action tonight would be to amend the conditions of the motion.

ACTION:

There is no motion.

ON THE QUESTION:

The conditions remain the same. If the applicant wants to come back for another hearing he would have to change the variance request. He said he would have done that a month ago if that's what he was told to do when he applied for this meeting. This is very frustrating and he does not understand. Deputy Town Attorney Steve Bengart said he tried to create a fair process for something that is out of the ordinary. Mr. Ganschow said it does not make sense to him.

New Business**Appeal No. 1**

Ryan Glaser
Residential Single Family

Requests the Board of Appeals approve and grant a 3.65' variance to allow for a 6.35' side yard setback for the construction of a detached accessory structure (generator) located at 4624 Brentwood Drive.

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

DISCUSSION:

There are two (2) neighbor notification forms on file. Bob Glaser (father) and Ryan Glaser (son) are both present. Mr. Glaser explained there it not the required 10' from the lot line on the side of the house where the utilities are, this is where they want to place the generator. He noted that the neighbor on that side is set way back so it will not be a major problem from a safety standpoint.

Mrs. Burkard asked if landscaping will be placed around the generator. Mr. Glaser said yes, the air conditioner is over there so the landscaping will hide both units.

In response to Mr. D'Amato's question on who will install the generator, Mr. Glaser said Charlie Bono is the contractor who will do the work, he is a certified electrician and does a lot of work in the area. The applicant went over the site plan with Mr. Bono. This is the best spot because the windows are on the side of the house and the generator has to be 5' from the windows. As far as placing it in the back yard it is more of a safety concern because of the children, the dog and the property is fenced in. It also introduces a second utility into the second wall of the house.

Mr. Mills voiced his concern about the aesthetics of the generator noting that the house at 4614 is setback. He said it could be mitigated by putting some landscaping around the generator. Mr. Glaser said they planned on that. Mr. Mills asked if the applicant is ok if landscaping was made a condition of the approval, perhaps installing shrubs 1.5' in height. Mr. Glaser said that is acceptable.

Mr. Glaser clarified for the record that both neighbors have been notified of his request and neither of them objected.

Chairman Michnik asked why the applicant does not want to put it inside the fence. Mr. Glaser said the air conditioning unit is on the outside of the fence and he would like to keep both utilities on the outside of the fence in one spot and then landscape one (1) spot instead of two (2), this will be less cost. Chairman Michnik asked if the neighbor realizes how loud generators are. Mr. Glaser said the neighbor did not have any issue with it. Chairman Michnik has a concern about the placement of the generator. Mr. Glaser said if they put it outside the fence it would be closer to the neighbor's house. Mr. Glaser said this generator is only 2' by 2', it is a 12 kw generator. He went on to say there will be landscaping around both the generator and the air conditioning unit.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 1 as written with the condition that the applicant install plantings of boxwood or a similar plant on all sides of the generator approximately 1.5' in height.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Appeal No. 2

John Thomann
Residential Single Family

Requests the Board of Appeals approve and grant a 12.5' variance to allow for a 22.5' front yard setback for the construction of an attached accessory structure located at 4290 Fireside Drive.

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

DISCUSSION:

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

John Thomann is present and explained that he is looking to add an attached garage with a breezeway to his house. His wife is 67 years old and he would like for her to be able to park the car and be able to walk in the house without going outside. The other garage they had was made into an addition, but as a garage it was too small anyway. They needed that addition because they have 24 grandchildren and they needed room when they came to visit. He was before the Board previously with a request which was denied. He came back before the Board a second time and a Board member asked him to move the addition back, so he moved it back. He has the biggest street intersection in Clarence and this affects his request. Mr. Thomann said 4280 Fireside is 24' from the road. He does not think he would cause any site line issues with this request.

Mr. Mills asked if the applicant can get away with any smaller garage structure. Mr. Thomann said he could narrow it on the backside, it would be 24' by 24'. Mr. Mills asked if the materials will match the house. Mr. Thomann said yes it will be Hardy Board and asphalt shingles and will match the house. He does not have elevations, he wanted to get it approved first before wasting money on elevations. He is proposing a double-bay, there would be a window or two on the north and south sides of the structure.

Mrs. Burkard thinks this is an improvement over what the Board saw before. The garage will have a footer and it will be used for personal use only, no business equipment will be stored at his house.

Mr. McNamara asked if the applicant thought about rotating the addition at a 45 degree angle so that the front corner is setback further and a variance would not be needed. Mr. Thomann said no matter where he put it he would still need a variance. If he pivoted it as Mr. McNamara suggested he would be closer to his neighbor's property. Mr. Thomann is not adverse to this suggestion but he thought straight on would be better.

Chairman Michnik said he doesn't believe there will be a site line issue. He does not have a problem with the size he is requesting. The applicant has a half basement, Chairman Michnik said the proposed structure will probably be used for storage. Chairman Michnik does not think 6' will make a difference to the area that the applicant will be using.

Joe Miano, of 4289 Oakwood Drive, voiced his concern noting some history on the property which includes the removal of some shrubs in order for the fence to be installed on the applicant's property. He went on to say that the applicant had a garage on his property but took it down and put another family room on. Now he is putting this garage up that is going to totally block his (Mr. Milano's) view of the rest of the neighborhood. Mr. Miano has a two-tiered deck on his pool and instead of seeing the rest of the neighborhood he will not see a wall. He has a problem with this, it changes the whole aesthetics of his property and his view. Initially the applicant told Mr. Miano he was going to put a second floor on, now

the applicant is telling him he wants to put a work shop in the addition. Mr. Miano questioned a workshop. Chairman Michnik asked the question, "Doesn't the applicant have the right to improve his property?" He got a permit to put up a fence, he didn't need neighbor notification to put up a fence. Chairman Michnik said we all have the right to improve our property. If he wanted to take his garage down and build a family room and it met the code, that is his prerogative. Mr. Miano said what the applicant is asking for now doesn't meet the code and that is why he is before the Zoning Board of Appeals. Chairman Michnik said he is before the Board because he wants to build a garage.

Brian Panzer, of 8545 Nottingham Terrace, said the structure exceeds what the lot should support. He went on to say that for the last 2 years plus, it has been a perpetual construction site. He is tired of noise on weekends and trucks and constant construction, the removal of siding on the house which then sat un-sided for nearly a year. He thought the house was abandoned so he called the Town. The house is not inhabited during the summer months. If this is approved he asked if the Board could set a condition that it be done in a timely manner. It would be great if a project plan could be submitted with a schedule and milestones.

Julie McCullough, of 4251 Fireside Drive, has lived here since 1975. She reiterated the fact that Mr. Thomann had a garage and eliminated it for extra living space, he has the right to do that. But now to put a 24' by 30' garage up, that is a really big garage. It is an obstruction, it does not fit the character of Harris Hill. Clarence has a master plan where the community is preserved and protected. They fought three (3) years ago when Mr. Baines wanted to have a building built on Oakwood, the residents said no it doesn't fit the character of the community. This is a very large structure and does not fit the size of the property. She is here to protect and preserve her neighborhood, the proposal is too close to the street, it is on a curve, there is not a sidewalk and there is poor lighting. The sidewalk stops at the driveway. She asked what happens to the driveway. Chairman Michnik assumes it will stay the way it is, if he needs to change it he will be able to. Ms. McCullough said the lighting is poor and when coming around that curve any lighting that is there will be blocked by that garage. Chairman Michnik said depending on where the light is he does not see the garage blocking anybody's light from the light fixtures. She asked that the Board members come down the street in the dark to experience it. Many people have done remodeling to their homes and have kept to the code. In looking at the neighbors that are present at this meeting it is clear that the request is disagreeable to them.

Ruth Ann DiNatale, of 4289 Fireside Drive, said her objection is aesthetics, she looks at it. The improvements that have been made to the house are beautiful. She objects to more building on that small area, she thinks it is too much.

Mr. Mills asked what the total square footage of the home is. Mr. Thomann said about 1800-2000 square feet. Mr. Mills asked if Mr. Thomann is aware of any other garage structures similar in size as to what he is proposing in the neighborhood. Mr. Thomann does not know. The garage will be for personal use only.

Mrs. Burkard asked if the addition will be done in a timely manner. Mr. Thomann said yes. He went on to explain they have a summer home and spend a lot of time there when they can. The garage would be done by a contractor. He did remove the vinyl siding on the home and that revealed other problems that needed to be addressed and took more time than he thought. It is clarified that the size of the garage is allowed on this property, it is the location that needs the variance.

Mr. Thomann has owned the property since 2011. He has not seen any accidents at this corner. There have not been any visibility issues either.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Nay
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3

Angelo Maritato
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow for a 6' side yard setback for the construction of a detached accessory structure (generator) located at 8195 Lisa Lane.

Appeal No. 3 is in variance to §229-55(E)(1).

DISCUSSION:

Angelo and Tricia Maritato are both present. Mr. Maritato said he would like to have a natural gas generator installed due to frequent loss of power. He wants to put it on the east side of his house next to his neighbor Mark Jann. Mr. Jann is also getting a generator and is aware of Mr. Maritato's request and has no problem with it. Mr. Maritato explained that he learned that the generator is actually 25.5" so the actual variance would be 3.305". He has tried to place the generator as close to the utilities as possible, this is a strong suggestion in the generator's manual. If he placed it behind his home his family room is there with the windows, the generator would have to be 10' into his back yard and he feels that is a safety issue with his grandchildren and nieces and nephews who come to visit often. It would cost between \$500 and \$1,000 more to put the generator in the back. Mr. Maritato has letter from one of the installers, Zenner and Ritter, indicating that they think it is appropriate to put it on the side of the house. If the generator is approved for the side of the house Mr. Maritato said he would put landscaping around it. He noted that from three (3) sides of the house the generator cannot be seen. It will only be seen coming out of his neighbor's garage. In the month of September the power was lost three (3) times.

Mr. Jann said last year the power was lost between eight (8) and ten (10) times. He has to have a generator because the area is wet and he has to have his sump pump running or his basement will flood. He has a portable generator but if the power goes out at 3am he does not want to have to get up to get the portable generator running. Mr. Jann is here to support Mr. Maritato, he is 100% for the variance.

Chairman Michnik asked if there will be shrubbery approximately 1.5' tall placed around the generator. Mr. Maritato said yes he will do that.

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

ACTION:

Motion by Patricia Burkard, seconded by Ryan Mills, to **approve** Appeal No. 3 amended to reflect a request for a 3.305' variance and with the condition that shrubbery is to be added around the generator. The shrubbery is to be 1.5' in height and is to be boxwood or similar.

Richard McNamara Aye
David D'Amato Aye
Daniel Michnik Aye

Patricia Burkard Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting adjourned at 8:20 p.m.

Carolyn Delgato
Senior Clerk Typist