

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday November 8, 2016
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

Zoning Board of Appeals members absent: David D’Amato

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart

Other interested parties present:

Tyler Palmer, United Wind	John Braddell	Dennis Steszewski
Frank Budelewski	Paul McCarthy Jr.	Patrick Spoth
Linda Braddell	Mary Beth Kiesel	Molly Kiesel
Jeff Braunscheidel	James Joyce	Elizabeth Walczak
Jo Regan	Susan Lex	Stacy Stephens
David Stephens	James Frey	

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on October 11, 2016, as written.

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

MOTION CARRIED.

Old Business

Appeal No. 1

John Braddell/Lakeside Sod
Industrial Business Park

Requests the Board of Appeals approve and grant a 93’8” variance to allow for a 153’8” tall wind turbine located at 6660 Goodrich Road.

Appeal No. 1 is in variance to §173-4(C).

DISCUSSION:

Tyler Palmer of United Wind and property owner John Braddell are present. Mr. Palmer said at the last meeting the Board asked the applicant to explore an alternate location for the turbine. Mr. Palmer explained that relocation is not possible due to the space in the lot and because there are pumps near the pond. Relocating the tower would also reduce the production from 74% to 69%, there would be a total loss of \$4,000-\$5,000. There is a tree line that will act as a visual buffer because it is well above the buildings in the area, it will be hard to see the tower through the trees.

Mr. McNamara asked if the turbine could be moved to the north, to the other side of the pond. Mr. Palmer said they could not run a wire through the pond, they would have to go around it. If they went around the pond the wire would have to be increased in size and length and that would become too costly. Mr. Palmer said it would not change the view shed if the turbine was located on the other side of the pond. Mr. McNamara said the noise and the view will be farther away from the neighbor's house if it is moved north. The expense to run larger and longer wire would be that of the applicant. The applicant leases the turbine from the company.

Mr. Braddell said the proposed location of the mill is ideal because it will get the ideal winds, it is on a section of property where the ground cannot be worked anyway, it is a useless piece of ground. If it is moved to the other side of the pond, not only will wire around the pond have to be installed, wire would have to go around/under the creek that is there as well. If the turbine is put further north, that is getting into tillable land and the view is not being changed that much. Mr. McNamara understands but said they have to try and work with the neighbors too.

Mrs. Burkard asked what the distance is from the proposed location to the nearest house. Mr. Palmer said it is well over 300'. If the turbine is moved to the other side of the pond it would be an additional 100' away from the nearest house. Mrs. Burkard is concerned about the neighbors.

Chairman Michnik suggested the applicant work with the Board and the neighbors to come to a decision that is acceptable for everyone.

Mr. Mills said he understands that the view sight lines may not change so much but the drop/fall zone would be farther out. Mr. Palmer said the turbine is designed to fall on itself. Mr. Mills said there have been circumstances where they don't work as designed, so pushing it farther out could be beneficial from a safety perspective. Mr. Palmer agreed. Mr. Mills said the noise would be less if it was further out. Mr. Palmer agreed but noted that he doesn't ever see the noise factor as an issue.

Mr. Braddell said he does not want to move it, if he has to move it he does not want it. He wants to be a good neighbor, but the neighbors are not going to see or hear anything if it is put in the proposed location. Mr. McNamara asked Mr. Braddell if the neighbors are not happy would he take the turbine down. Mr. Braddell said no.

Chairman Michnik noted that there is a letter on file from Mr. Steszewski who is in attendance at this meeting. Neighbor notification forms were sent certified mail to seven (7) neighboring properties. Deputy Attorney Steve Bengart said the Town has met their legal obligation as far as notification.

Dennis Steszewski, of 9430 Pine Meadow Drive, said the location of the proposed wind mill is right out his kitchen window and his kids' are upstairs and their window faces that way. He understands that he lives

next to a commercial parcel, but he never signed up for a 93' variance. He also understands the cost impact if it is moved north but he has to live with sight and noise, 60 decibels is a large sound in the middle of the night. He also read that there are health concerns with these things. The homes in the area will decrease in value, no one will want to live next to a giant windmill. The Board shot a windmill down three years ago, Mr. Steszewski thinks he should be afforded the same principle as that, to be fair.

Patrick Spoth, of 9270 Wolcott Road, said he has two (2) windmills and went through a similar process as he is seeing tonight. As far as the sight lines go, you would be amazed at how little moving it back changes the sight lines. The reason is when he is at the back of his farm or 1,000 yards down the road he can see it better than when he is in his barnyard. He went on to say that noise has not been an issue at all, the windiest day had 30 mile an hour winds and while you could hear the windmill, it was not loud. On most days you don't hear it at all. People who visited his farm had nothing but positive comments about the windmill and they could not believe how quiet it was. As far as the cost, there is more cost than just increasing the wire, it would cost more in labor as well. Mrs. Burkard asked the distance between the closest house and Mr. Spoth's windmill. Mr. Spoth said approximately 350'.

Paul McCarthy, owns a business at 6600 Goodrich Road, said he does not have a problem with a windmill going up there. He does not think it will affect the neighbors in any way. He is at his business from approximately 8am to 5pm daily.

ACTION:

Motion Ryan Mills, seconded by Daniel Michnik, pursuant to Article 8 of the Environmental Conservation Law, to **issue** a Negative Declaration on the proposed height variance to allow for a wind turbine tower in excess of 60'. This Unlisted Action involves the granting of a height variance to allow for a wind turbine in excess of 60' at 6660 Goodrich Road.

ON THE QUESTION:

Chairman Michnik seconds the motion with the codicil that the applicant camouflage the wind mill so that it blends into the environment.

Mr. Palmer said it is a galvanized tower with a white finish. Mr. Spoth said his tower is a white finish so that when you look at it against the sky you barely see it, if it was painted darker it would stick out more.

Chairman Michnik withdraws the codicil that the applicant camouflage the wind mill.

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

MOTION CARRIED.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1 under Old Business. The Board has seen similar applications, this can be distinguished in that while there is some nearby residential it is not as dense as other applications.

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

MOTION FAILED.

New Business

Appeal No. 1

Mary Beth Kiesel
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 1,800 square foot variance to allow a 2,000 square foot detached accessory structure.
- 2.) A 4'6" variance to allow a 20'6" tall detached accessory structure.

Both requests apply to 5105 Harris Hill Road.

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

Richard McNamara recused himself from the discussion and vote for this Appeal and left the dais.

DISCUSSION:

Mary Beth Kiesel is present. Two neighbor notification forms are on file. Ms. Kiesel said she is looking to put up a pole barn. She would like to build the proposed structure on her property to expand her woodworking workshop, for storage of items such as patio furniture, paperwork, lawn mowers and snow blowers, and to use as a changing room for her pool. The existing 10' x 16' shed will be removed.

Mrs. Burkard said she was concerned for the neighbor. Ms. Kiesel said that neighbor is her mother. Her sister Molly is the bus driver for the school, they pick up from 6 elementary schools in the area from 2:30 pm to 3:30 pm.

Mr. Mills asked who owns the duplexes on the back of the property. 5105 Harris Hill Road is owned by Mary Beth and her sister Molly. They live on one side and they rent out the other side. 5135 Harris Hill Road is owned by her sister Peggy, she lives on one side and rents out the other side. Her mother and father live at 5145 Harris Hill Road. Mr. Mills noted the application is for a large structure, he asked if there is any way to decrease the size. Ms. Kiesel said she figured the square footage for all the different things she wants to do and it came up to 1430 square feet. She was thinking of doing a 40' x 40' and then come back to the Board if she needs to expand it in the future. It is clarified that the variance being requested is 1400 square feet. Mr. Mills asked if the applicant thought about doing anything aesthetically pleasing to the front of the structure. Ms. Kiesel said she was thinking of putting a porch on the front of the structure with some landscaping.

Chairman Michnik noted that the Board approved a good size variance for the garage that was put on Ms. Kiesel's house in 2010. Chairman Michnik voiced his concern that the proposed structure will look like a barn which does not fit in with the character of the area they have created there. The applicant would have to do a lot more to the building to make it look appealing and no so obvious that it is a steel barn building. Ms. Kiesel said it will match the color of her house. Chairman Michnik is not keen on the size, the height and the way it is laid out. He suggested the applicant come back with plans showing aesthetic features like dormers, windows, and decorative stone or brick on the bottom. He would like the building to look

acceptable in that residential area. He does not think the applicant needs 40' in depth, 30' would be acceptable to him.

Mr. Mills shares the aesthetic concerns of Chairman Michnik, but he said it can be mitigated by additional design features. If the applicant desires, this request can be tabled tonight and she can come back with some different design features. Mr. Mills' concern is the view from Harris Hill Road. Chairman Michnik asked if the applicant needs the height, she said she could probably go 12' but she is claustrophobic and wanted space. Chairman Michnik said the Board needs to look at the community when reviewing a request.

Mrs. Burkard said pole barns can be ugly. She agreed that the applicant can make the proposed structure look a lot better. She asked if the property could be a building lot in the future. Ms. Kiesel said they need two (2) acres to build a house, they do not have the front footage for a subdivision, and they only have three (3) extra acres, this is staying in the family, they will never sell it. They have a huge picnic every year with 2500 people and save the back fields for parking during this event. Ms. Kiesel went on to say that a house could not be built back there.

Chairman Michnik said there is no guarantee that what the applicant brings back to the Board will be approved. Ms. Kiesel understands. She said she wishes to table the request and come back before the Board with a revised plan per the discussion this evening. She also clarified that 12' high is acceptable to her.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **table** Appeal No. 1.

Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Richard McNamara returned to the dais.

Appeal No. 2

Katie Gutillo and Jeff Braunscheidel
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow a 200' front yard setback for the construction of a single family residence at 9840 Keller Road.

Appeal No. 2 is in variance to §229-41(A).

DISCUSSION:

Jeff Braunscheidel is present. There are four (4) neighbor notification forms on file. Mr. Braunscheidel explained that he is looking to build a 3500 square foot ranch style home setback 200' from Keller Road. He has 219' of frontage, the property total is 37 acres, this parcel is 13 acre parcel. There are five (5) acres that are completely out of floodplain. He wants to be setback in case the Town grows, the Town owns property across the street and if that is developed he wants to be setback from it. Also, there is a pole barn on the adjacent property that he would like to keep on his side rather than in his whole backyard. That was

the purpose of purchasing the property so that he could setback his home, he spoke with the neighbors before he purchased the property.

Mrs. Burkard asked what the setback is at 9884 Keller Road. Mr. Braunscheidel thinks that house is approximately 150' back, he plans to build his house a little further back than that.

Mr. Braunscheidel closed on the property in July 2016. Mr. Mills asked if there are other homes with a similar setback on Keller Road. Mr. Braunscheidel said further to the east there is, one such residence is setback 350'. Mr. Callahan said the code states a 45'-200' setback in this zone. The established setback is unknown at this time. Mr. Mills asked what the applicant would do if his request was denied. Mr. Braunscheidel said he has not thought that way. He is a construction worker and he is very good with grades, drainage will not be an issue for him nor for the neighbors. He bought 37 acres to enjoy the woods and the natural land, there is mostly wetlands back there with nothing else going on back there, he wants to enjoy his privacy.

Chairman Michnik asked if the applicant inquired about the variance before he bought the property, did he look at other setbacks. Mr. Braunscheidel said yes he did; he was also told it would not be a problem because of the amount of property and the amount of road frontage and the type of house he is going to build. He spoke with people from the Town and neighbors. Chairman Michnik referenced the neighboring properties and said they are all closer to the road. Mr. Braunscheidel said 9854 Keller Road is a farm house that was built 150 years ago. He went on to say that neither one of his neighbors are within 100' of the proposed location of his home. He is also willing to install pine trees as a buffer. Chairman Michnik said the front yard setback has already been set by the existing neighbors. He said the Board has to look at if the request fits in with the character of the community. Mr. Braunscheidel said it will be a very tasteful residence.

Mr. Mills asked if there are any plans to further develop the remaining property. Mr. Braunscheidel said there are no other plans, it will always be just one residential single family home. Mr. Mills asked if there is anything less than 200' that the applicant would be satisfied with. The applicant said if he goes closer to the road the pole barn next door will consistently be right there. Mr. Mills said there are landscaping techniques that could mitigate the pole barn view. Mr. Braunscheidel said that is also the lower side of the property, everything flows to the ditch that runs behind that pole barn. He needs to watch any obstruction of that with a berm or anything else. This is another reason he wanted to go back because of the natural flow of the land drains off to that ditch. 200' back is the natural high spot of the property.

The wetlands start just in front of the pond that is on the property. Mr. McNamara asked if the applicant thought of putting an Open Development in there with three or four houses. Mr. Braunscheidel said this will be a single family residence only. He does not want anyone else back there, he bought it for recreational use, he is a deer hunter.

Deputy Town Attorney Steve Bengart asked if it would be acceptable to the applicant if there was a condition placed on the approval (if approved) that there would be no further subdivision of the property. Mr. Braunscheidel said he would be agreeable to that condition.

ACTION:

Motion by Patricia Burkard, seconded by Richard McNamara, to **approve** Appeal No. 2 with the stipulation that there will be no further development on this property.

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

MOTION CARRIED.

Appeal No. 3

James Joyce
Residential Single Family

Requests the Board of Appeals approve and grant a .18 acre variance to allow for the creation of a .82 acre unsewered lot, split from 5175 Brookfield Lane.

Appeal No. 3 is in variance to §229-49(A).

DISCUSSION:

James Joyce is present and said he has one (1) signed neighbor notification form. Both neighbors were notified by certified mail but only one returned the signed form.

Mr. Joyce distributed a copy of a satellite view of 5175 Brookfield Lane. He pointed out that the lots directly across the street were originally built as one (1) lot, they were split in the 1970's, this was a similar sized lot to Mr. Joyce's lot. There is also a lot south of the applicant's property that was similar in size and was subsequently divided. There was one lot that was divided and sold as recent as 2008, that lot is actually smaller than what Mr. Joyce is requesting. Mr. Joyce said all he is doing is setting precedent that similar sized lots have been split in the past in a similar fashion to what he is looking to do. There is nothing that is impacted behind Mr. Joyce's property because Lexor Lane is directly behind the property. He went on to say that Brookfield Lane has 20 lots, of those 20 lots 7 are smaller than the lot size that he is requesting. Currently, there are no other properties on Brookfield Lane that could be divided, assuming 125' frontage. The lot is flat. He submitted a copy of the survey and explained he is taking 125' of frontage on Brookfield Lane, same 125' bordering Lexor Lane. The only variance is .18 acre.

Mr. McNamara referred to the septic tank access which is 2.7' off the line on both properties. He went on to say that the Erie County Health Department requires the septic be at least 10' off the property line. Mr. Joyce said the septic system actually goes to the front and went on to explain that when the survey was done the surveyor did not indicate to him that there needed to be any distance from that piece and the sewer. Mr. Joyce said when he discussed this with the Zoning Board he had other surveys done when they were taking other pieces of ground and the consensus was that the straight line division was better than coming in at 145' and coming in 10' and taking more of the property. Mr. McNamara said the location of the leach field and the sand field in relationship to both property lines is unknown. Mr. McNamara said he would not vote on this without knowing where the field is. Mr. Joyce said it drains to the front in the grassy area toward Brookfield Lane. It is clarified that the applicant needs to provide a plan of where the septic field is located. Deputy Town Attorney Steve Bengart said if someone wants to split a piece of property they should check with the Health Department overall before going through all these steps, and make sure they not only approve the existing tank but also allow a tank that is less than one (1) acre on another parcel.

Mr. Joyce requested the item be tabled.

It is clarified that the septic system should be marked on the survey. The applicant should check with the County to see if they are going to allow a septic system on the second lot.

Susan Lex, of 5225 Brookfield Lane, asked who would stipulate the location of the septic tank. Deputy Town Attorney Steve Bengart said it actually does not matter to the town, but it would just be fool-hearty to approve this without the County's appropriate approvals, it could all be a waste of time and money for the applicant. The Zoning Board of Appeals does not have to be concerned with what the County will or won't do, they just have to make a decision on whether they want to vary the law as it relates to the Town of Clarence.

Mrs. Walczak, of 5205 Brookfield Lane, said it is not a flat lot, it comes down towards her house and it is very wet there. She had to have someone come and run a line out to the road from the sump pump, when that was being done she asked the worker why it is so wet in the front and he said because there is a French drain there that is part of the septic system for the people on top of the hill. She went on to say it is constantly wet there, she got her tractor stuck in there and she got mud all over her back. It is constantly draining onto her property and she feels it should be addressed. Deputy Town Attorney Steve Bengart explained that whenever there is a project the law requires that drainage be dealt with, which may even improve the current situation but it cannot make it worse.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **table** Appeal No. 3.

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

MOTION CARRIED.

Appeal No. 4

David and Stacy Stephens
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow up to a 550' front yard setback for the construction of a single family residence located at SBL#31.00-2-26.11, Salt Road.

Appeal No. 4 is in variance to §229-41(A).

DISCUSSION:

David and Stacy Stephens are present. Twelve (12) neighbor notification forms were mailed to adjacent/surrounding neighbors via certified mail. A copy of the receipts are on file.

Mr. Stephens said he and his wife are purchasing the property and would like to build a house 550' back from the road. After much research they have found that this is the only viable spot on the property to build a house. They explored the County Road side, it is entirely wetlands. On the Salt Road side Beeman Creek comes up close to the road, it is about 60'-70' from the road on the eastern portion. That line continues across following parallel with Salt Road. They spoke with the Erie County Health Department who said they will not allow a waste water system in front of the creek because their current code states there must be 100' between a septic system and a creek or drainage area. In order to have the least amount of environmental impact they proposed the location of the house where they would not have to clear a lot of brush and trees. They would like to locate the septic system at the 400' mark, this is where the brush opens up. The septic system will take up approximately 100'-150' so the house would then be set at 550'. The size of the house would be 3,000-3,500 square feet. There are 54 acres, of that 54 there are no wetlands on

28 acres, 11 acres in the front is void of wetlands except for the actual creek bed itself, including the brush on either side of the creek. He has talked with the Army Corp of Engineers extensively on this proposal. Mr. Stephens said they have not closed on the property yet, it is contingent on them being able to build.

Chairman Michnik asked what the applicant plans to do with the frontage on County Road. Mr. Stephens said there is nothing that can be done there, it is State Wetland. The houses on either side of this property were built prior to the current State Wetland regulations being in force.

James Frey of 7080 Salt Road submitted photos of what his property looks like when it floods, the photos are on file. He questioned what the environmental impact of this proposal will be. The water/flooding issue is Mr. Frey's only concern. If what Mr. Stephens does on his property makes the water on Mr. Frey's property go any higher Mr. Frey will be very upset. Mr. Frey went on to say his property floods 4-5 times a year, it goes through 2 more residences to the west, it lasts 2-3 days and mostly happens in the Spring. It creates flooding issues inside his house as well.

Deputy Town Attorney Steve Bengart explained that the law requires there must be a drainage plan when a house is going to be built, that plan must be approved by the Engineering Department. In order for the plan to be approved it must not allow additional drainage off the property. Sometimes that plan improves drainage on the immediate surrounding areas, although it is not required to improve it, it cannot make it worse.

Mr. Stephens discussed bridging the creek with the Army Corp of Engineers, the process is very stringent and he understands that he would need their approval. He went on to say that a culvert pipe would not work in a situation like this.

Mr. Frey said there are three box culverts that were installed in the area that he did not agree with. It agreed that Mr. Stephens has to put a bridge in as opposed to culverts. Branches, sticks, etc., will get caught and plug up the culverts. Mr. Stephens said he wants to provide the least amount of environmental impact.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written. Based upon the applicant's testimony it has been demonstrated that this is a unique parcel with unique elements to it including, but not limited to, various water points on the property. For various reasons as stated in the record, the applicant has demonstrated the setback is appropriate.

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

MOTION CARRIED.

Meeting adjourned at 8:49 p.m.

Carolyn Delgato
Senior Clerk Typist