

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday December 11, 2018
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
Patricia Burkard	Richard McNamara
Jonathan Hickey	Patrick Krey

Town Officials present:

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

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** the minutes of the meeting held on November 13, 2018, as written with the following changes:

-the word “pervious” in the last sentence of the third bullet point on page 2018-84 shall be changed to “impervious”. Mr. Hickey clarified that he meant to say “impervious” when he was adding the condition.

-for clarification: the fourth sentence in the second paragraph on page 2018-85 is amended to read, “These analyses are not based on majority and /or minority **of the interested parties.**”

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

MOTION CARRIED.

Other interested parties present:

Anthony Arcuri	Craig Kesnikowski	Thomas Kolbert	Arthur Fuerst
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New Business

Appeal No. 1

Anthony Arcuri
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 150’ variance to allow a 250’ front yard setback for the construction of a single family home located at 6735 Conner Road.

Appeal No. 1 is in variance to §229-41(A) *allowable front yard setback of 100’.

DISCUSSION:

Anthony Arcuri is present.

Mr. Mills reads a memo from Timothy Lavocat, Town Engineer, dated December 10, 2018 into the record: "Please be advised that there are significant drainage issues at and in the area of 6735 Conner Road that include flood waters overtopping Conner Road at times. Any development application for this lot will require a thorough drainage evaluation and analysis by a licensed professional engineer." The memo is on file as Exhibit A.

Mr. Arcuri said he is in contract to buy the land. About three-quarters of it is considered Federal Wetlands, so he had been working with the Army Corp of Engineers. The type of house he wants to build is a ranch, he is disabled and he does not have the ability to go up, only to make a large foot print for a house. The plot that he needs is an 80' by 80' square for the house and garage, to access this area he needs to go through the wetland area, which he has already obtained the permit from the Army Corp of Engineers. He referred to the Earth Dimensions Wetland Delineation map which is on file. Mr. Arcuri said the delineation was reviewed by the Army Corp of Engineers who approved it and agreed with it. The only way for him to build a house is to have the house setback further than 100' because that is really the only place you can build a house on this property. The property is just over 3 acres in size. If the variance is denied and Mr. Arcuri could not build the house, he would not buy the property.

There is one (1) neighbor notification form on file and certified mail receipts for four (4) other forms that were mailed to neighbors.

Mr. Mills referenced a letter from Virginia Lepley, granddaughter and executor of the Lamale estate. Mr. Arcuri confirmed that Ms. Lepley is the seller and runs that estate. The letter and its attachments are dated November 16, 2018 and are Exhibit B. The letter gives permission to Anthony Arcuri to proceed with applying for a setback variance. The letter references the wetlands delineation map. The sale of this property is needed to settle an estate.

Mr. Arcuri said he did everything the Planning and Zoning office asked him to do. He spoke to three of the neighbors and no one had any objections to his request. He knows there were significant drainage issues but the County fixed it and they plan on redoing the drainage in that area in the next few years. He would work with engineers to make sure the drainage is appropriate.

Mr. Hickey asked what is so special about the property, it seems to him that it is a round peg in a square hole. Mr. Arcuri likes the idea that it is a wooded lot and it is a larger lot than most of the others that are being built in the Northwoods area. He needs a larger property to build a ranch because of his disability. Mr. Hickey said there are plenty of plots in the Town of Clarence that have 80' by 80' capability. In response to Mr. Hickey's question Mr. Arcuri said he does not know Ms. Lepley other than she is the seller. He also likes the idea that the neighbors are further away and it's a larger piece of property. He would live there with his wife and daughter. Mr. Hickey asked how much he is purchasing the land for. Mr. Arcuri said \$47,000 and it is contingent on the fact that he will be able to build the house he is proposing, which is a 2800 square foot ranch. Mr. Hickey asked if the Army Corp or anyone else with expertise in this area, suggested any other dimensions that would accomplish what the applicant is looking to do, can the variance be reduced at all. The setback to the front door would be about 230', and from the garage it would be about 200', he asked for 250' to have some leeway so he would not have to come back to the board if the measurement changed. Mr. Hickey asked if it is known what impact a structure like this will have on the

existing drainage. Deputy Town Attorney Steven Bengart said that will be handled by the Engineering Department. Mr. Hickey asked if the applicant is concerned about building in the wetlands where there is already major long standing drainage issues. Mr. Arcuri said he spoke with his engineer and architect and they all feel that they can do this in a way where it shouldn't disrupt anything. There is no standing water outside the culvert/ditch areas. He went on to say that the wetlands are really not wet. Mr. Hickey does not find it compelling on any level how the sale of this property impacts the estate, Ms. Lepley does not have to sell this property to sell her grandparents estate. Deputy Town Attorney Steven Bengart said the implication in the letter is that they don't have enough money in the estate to settle it, but that is not a concern of this Board and should not be a consideration.

Mr. Mills asked what size house the applicant is contemplating. Mr. Arcuri said 2800 square feet, he has floor plans but they are in an e-mail, he did not print them out. Mr. Mills asked if Mr. Arcuri has the full ecology report that Ms. Lepley references in her letter, he does not. The report from the Army Corp of Engineers is on file as Exhibit C.

Mr. McNamara asked if the applicant checked with the Erie County Health Department for a septic system outside the wetlands. Mr. Arcuri said not yet, if the is approved the next step would be to do a perc test and his engineer would do a sketch for the septic system. His architect said there should not be an issue putting the septic system in the front area, it would be a sand filter system. All the utilities will be underground except sewage. The Army Corp gave him the permit to build 15' x 90' through the wetland area, this would be for his driveway and utilities. The Activities Authorized by 2017 Nationwide Permit is on file as Exhibit D.

Chairman Michnik referenced tree cutting and asked if the applicant is aware of the information that is located in the letter about the bats, etc. Mr. Arcuri is aware of the restrictions. Chairman Michnik also asked why the applicant finds this property so special. Mr. Arcuri said the price is attractive but it is really the location, he likes the woods, the privacy and the size of the lot. Chairman Michnik asked how much the home will cost to build. Mr. Arcuri said it will be around \$500,000. He is speaking with Natale Builders and they will provide him a quote for a dry-in, then he would hire subcontractors for the interior work that is to be done on the house.

Craig Kosnikowski, of 8875 Count Road, said his concern is that his backyard is under water 9 months out of the year, his yard backs up to back yard of the property in question. He asked what will happen to his property, building right behind it. His house would be 200' from the proposed location of Mr. Arcuri's house. Mr. Kosnikowski's lot size is 1.17 acres, he has lived there for two and a half years. This flooded condition is constant every year and he feels it is getting worse. Mr. Kosnikowski has never talked to Ms. Lepley. Mr. Hickey asked how far away from Mr. Kosnikowski's house can Mr. Arcuri get. It is clarified that the setback measurement is to that part of the structure's foundation that is closest to the road. The garage will be the closest part of the structure to Mr. Kosnikowski's property. Mr. Kosnikowski's concern is drainage and what the house would look like. Chairman Michnik said the applicant cannot dump any water onto any neighboring property, it is possible that Mr. Arcuri might even help the drainage issue on Mr. Kosnikowski's property. Mr. Kosnikowski is also worried about the wetlands changing in the area, Mr. Callahan said if the house is built it would then be a maintenance issue.

Mr. Arcuri advised that the Earth Dimensions Biologist told him that fill had been added to the property and that is why a portion of it is not wetlands. Mr. Arcuri noted that he spoke with neighbors and said he would work with them to mitigate any standing water issues.

Mr. Mills asked for clarification on the 200' setback, Mr. Arcuri said that would be the setback to the attached garage, the front door would be 30' past that. Mr. Arcuri said he may need a little more than 200' because he is so close to the wetland. He would be comfortable with a setback of 120' for the garage. The one disadvantage to pulling it closer to Connor Road is that it can't go to the south as far. He would like to bring it as close to Connor Road as he can, maximum of 250', minimum of 200'. Mr. McNamara said he could move it more to the south so it gives him more distance on the north side. Mr. Arcuri said there is no requirement to stay away from the Federal Wetlands a certain distance, you can go right up to it.

Deputy Town Attorney Steven Bengart asked the applicant if the Board approved the request would he be willing to allow the Town of Clarence to have an easement for drainage so they can access a ditch or anything that becomes necessary in the future so the Town can get on and off the property. Mr. Arcuri agreed.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 1 as written, with the condition that the applicant provide and allow for the Town of Clarence to have a drainage easement along the property if necessary and to be determined by the Town Engineer and Highway Superintendent. The building itself will be as far south as possible within 5' of the Federal Wetlands.

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

MOTION CARRIED.

Appeal No. 2

Arthur Fuerst
Residential Single Family

Requests the Board of Appeals approve and grant a 210' variance to allow a 300' front yard setback for the construction of a single family home located on the recently approved parcel, split from 9705 Clarence Center Road.

Appeal No. 2 is in variance to §229-52(A)(3) *allowable front yard setback of 90'.

DISCUSSION:

Mr. Fuerst is present and explained he has lived at this property for nine (9) years and knows that the property he is looking to build on is never used nor seen by any of the neighbors because of the trees and the fence that is there. It is a nice private spot that would not affect anything around it. He would build a home for himself.

Mrs. Burkard recalls the Board approving a barn for Mr. Fuerst. Mr. Fuerst said he never built that barn. This home would be a ranch for Mr. Fuerst, his wife and their dog, approximately 1500 square feet. The rest of the property will be sold, it is currently up for sale. Mrs. Burkard referred to the aerial shot of the property and said she thought there was a developer that owns the land that goes into the Spaulding Green area who is intending on developing it. She asked if that land backed up to Mr. Fuerst's property, Mr. Fuerst said no, Kamner Drive backs up to his property. Mrs. Burkard asked how far this house will be from the houses on Kamner Drive. Mr. Fuerst said 200'-300'.

There are seven (7) neighbor notification forms on file.

It will be a shared driveway, a single curb cut, at the road, which was a condition to split the lot.

Mr. Hickey asked if the applicant had other considerations regarding the request. Mr. Fuerst said he thought about a duplex but it would require another variance. Mr. Hickey asked if the applicant considered other locations that are closer to Clarence Center Road. Mr. Fuerst said he considered building closer to the road but then he would have to clear all the trees and that would change the character of the property and affect neighbors on both sides.

Chairman Michnik referenced the previous variance that was granted for the barn on the property and asked the Deputy Town Attorney if they can do anything about that. Deputy Town Attorney Steve Bengart said unless they made it a condition of this approval to relinquish that barn variance request. Mr. Fuerst said that would be no problem. Chairman Michnik voiced his concern with the variance request going so far back, he would prefer that he stay in line with the house that he is trying to sell. Mr. Fuerst said that would ruin the whole look for everybody. Chairman Michnik said he is asking for a huge variance and he would be the only house in the hamlet with a setback that far. Mr. Fuerst said there is a house on Creekview that was built in 1990 and is set far back. Chairman Michnik said the laws were different back then and he was not on the Zoning Board at that time. He is willing to give Mr. Fuerst some type of relief but not what he is asking for, he needs to stay consistent with the pattern of setbacks on the street. Mr. Fuerst asked why. Chairman Michnik said because he is asking for an exception to a Town of Clarence rule and why is he special versus the other guy that built to code. Mr. Fuerst said he is not special, look at the project as a whole, it would be beneficial to everyone around his property, not just him.

Mr. Krey asked for clarification on the shared driveway. Mr. Fuerst explained that the proposed driveway would come off the existing one. There is a hand-drawn sketch of the driveway on file.

Mrs. Burkard asked if the applicant thinks it will be harder to sell his home if this variance is granted and a home is built there. Mr. Fuerst said they won't see the house back there.

Mr. Mills said he agrees with Chairman Michnik's concerns. He is also concerned with the adverse impact on the neighbors. Mr. Fuerst said he has pine trees and a horse fence around the entire back so there is no visibility to the neighbors, although they will see the house in the winter time through the trees. Mr. Mills asked if the applicant is willing to enhance the privacy by adding more foliage around it. Mr. Fuerst said he does not know, he does not even have a plan for a house yet, although he would like it to be private too. Mr. Mills asked about staggering pines, to which Mr. Fuerst replied there are mature pines along the whole perimeter of the property. Mr. Mills asked if this can be further enhanced, perhaps with another layer of pines, Mr. Fuerst said sure. The details of the enhancement will be in the motion.

Mrs. Burkard said she is not comfortable with the lack of house plans for this request. She would like to see the request tabled and then see more of an idea of what the applicant is planning. Mr. Fuerst said he does not want to spend money on a plan. Deputy Town Attorney Steve Bengart suggested the applicant provide a potential footprint of the house. Mr. Fuerst said he does not know which way the house will face yet, and he is not even sure if he is going to build there, he may decide that he wants to sell it. Deputy Town Attorney Steve Bengart said if the request is denied this evening, the applicant would have to come back with something different if he wanted to come before the Board again.

Chairman Michnik clarified that the Board needs more information before they look at approving, denying or tabling this variance. Mr. Fuerst asked if he could say a 50' by 50' maximum footprint is the plan. Deputy Town Attorney Steve Bengart said sure but it must be staked out so the Board members have a visual when they visit the property. Mr. Fuerst is concerned that his wife may change her mind on the design of the house once he submits a plan. Deputy Town Attorney Steve Bengart said then he would have to come back before the Board again.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **table** Appeal No. 2 for all the reasons discussed.

ON THE QUESTION:

Mr. Fuerst is ok with his request being tabled. Mr. McNamara said with regards to staking the property he would like to see not only the location of the house but the proposed back property line of the new lot, as well. Mr. Fuerst said there is a stake in the brush. Deputy Town Attorney Steve Bengart suggested Mr. Fuerst put a couple of stakes on the property depicting the property lines so the members can gain perspective.

Mr. Fuerst said the property will be staked the week before the next meeting. Deputy Town Attorney Steve Bengart he does not have to notify the neighbors again.

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

MOTION CARRIED.

Meeting adjourned at 8:15 p.m.

Carolyn Delgato
Senior Clerk Typist