

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday December 13, 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  
Patricia Burkard  
Richard McNamara

Town Officials present:

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

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:04pm. The session ended at 7:14pm and the Zoning Board of Appeals meeting opened.

Other interested parties present:

Mary Beth Kiesel    James E. Joyce    Elizabeth Walczak    Jo Rogan    L. Jenkin

**Old Business**

**Appeal No. 1** (from November 2016 meeting)

Mary Beth Kiesel  
Residential Single Family

Requests the Board of Appeals approve and grant a 1400 square foot variance to allow for a 1600 square foot detached accessory structure located at 5105 Harris Hill Road.

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

Richard McNamara recused himself from the discussion and vote on this agenda item and left the dais.

**DISCUSSION:**

Mary Beth Kiesel is present and requested her appeal remain tabled.

**ACTION:**

Appeal No. 1, under Old Business, remains tabled.

Richard McNamara returned to the dais.

**Appeal No. 3** (from November 2016 meeting)

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:**

Mr. Joyce is present and explained that he requested a permit from the County to move the septic system of the existing house, that permit was approved and is on file as part of the record. Mr. Joyce spoke with Jennifer, the engineer with the Erie County Department of Health, and based on the new lot Jennifer indicated that the required square footage for a septic system is 33,000 square, they have 35,000 square feet. The frontage complies at 125'.

Mr. McNamara asked who did the plans for the permit. Mr. Joyce said Bill Perone is working with him on this. Mr. McNamara noted that Mr. Perone is not an engineer, and asked if the applicant has a plan, the County must have an engineered plan in order to approve a permit. Mr. Joyce said a representative came out from the County, dug a hole and looked at the ground, based on what they found they issued a permit to move forward on the septic system. Mr. McNamara finds it hard to believe that the County issued a permit without a set of engineered plans. Guidelines for the septic system are attached to the permit. Mr. McNamara said those are just guidelines, not a designed engineered plan; he is not comfortable making a decision on this request without a set of engineered plans. The permit indicates the septic system can be moved, but will it fit where the applicant wants to put it? This is unknown and is a concern of Mr. McNamara's. Mr. Joyce said the County never said they needed a set of plans for this particular system before they issue the permit. He assumes that because they issued a permit he is able to move forward, he is not going to put an inadequate system in for the house.

Mrs. Burkard is also concerned that there is no engineering plan, what if something is not right when the engineered plans are drawn up? Mr. Joyce said he assumed that in order to implement the structure and get an occupancy permit all those things will have to be satisfied, he said there over an acre, which is plenty of room to put the system in.

Chairman Michnik voiced his concern regarding the system. The permit said it is for a 4-bedroom system, but there is no diagram of how the system is going to be installed or where it is going to be installed. Mr. Joyce confirmed that the system will be within the required setback and that he is staying in-line with exactly what is there today.

Deputy Town Attorney Steve Bengart reminded the Board that there is a County approved permit on file. Whether or not they approved it with an engineered plan is irrelevant.

Mr. Joyce said the plan is to build a ranch-style 4-bedroom house, he does not know the square footage at this time. His plan is to sell the other property. He confirmed that the permit is for the existing house and its septic system. The permit does not give approval for a septic system on the new proposed lot. The applicant is doing his due diligence.

Linda Jenkin-Costanzo lives directly across the street and was a friend to Mr. Joyce's mom for 34 years. She asked if the 4-bedroom house referred to in the permit refers to the new house or the existing house. It

is clarified that the permit from the County approved a septic system for a house up to 4 bedrooms. If there is a problem and this doesn't go through, is the applicant selling off the property separately? If the lines were kept at 150' would there be enough space to do the septic out front of the old house and keep the remaining lot at 150'? It changes the character of the neighborhood, she is concerned that the new lot will be smaller and the house will be larger than what currently exists in the neighborhood. She does not have a problem with 150' wide lot, and asked why it can't be divided in two like that.

Chairman Michnik asked the applicant why he isn't splitting the lot in two with 150' of frontage for each. Mr. Joyce said 150' cuts into the existing turn-around driveway, so they moved it to 125' which is what they needed to remain compliant with the Town. Ms. Jenkin-Costanzo asked how much it would have cut off if it was kept at 150'. Mr. Joyce said it would be a difficult adjustment to move the parking area because the driveway comes off the garage. It is a side-load garage. Chairman Michnik asked if the applicant considered having parking behind the structure. Mr. Joyce said anything that it done to align the existing home requires additional funding. They are trying to do the least upsetting with what they currently have and still be compliant with the codes. Ms. Jenkin-Costanzo said the turn-around is huge and could be narrowed down.

Mrs. Burkard said since Mr. Joyce is not going to be living there does it matter to him if the turn-around is cut back? Mr. Joyce said he would like to keep what is, as is. He went on to say that even at 125' it is still larger than half the lots in the neighborhood, there are seven (7) lots smaller than 125'. It is pointed out that lots in the neighborhood range from 150' to 188'. Ms. Jenkin-Costanzo said this is an old established neighborhood from 60 years ago as part of the golf course with large lots, she thinks it will look like it doesn't belong in the neighborhood. She asked if they should have given more information like specific plans on how the system will be laid out before the County approved this. Chairman Michnik said the permit is for the existing system, there will be a new design for the new home.

Josephine Rogan lives directly across from the treed part of the property. When the landscape company comes to take care of the applicant's property in the summer her driveway is not accessible because of the big trucks, she can't imagine what will happen when construction takes place to build a home, it will be horrendous for her. Her driveway won't be accessible for months while this is being done. She went on to say that you are talking about a 4-bedroom home sandwiched between two ranches, the existing ranch is 1,000 square feet, what will it be like to build a 4-bedroom home next to it? It will change the whole character of the neighborhood. Preserving green space is not just preserving farmland, the beauty of the homes on her street and streets like Harris Hill is that there is green space between the homes, that is what makes the character of the neighborhood. If you start cutting up the properties and sticking big homes in between them you will ruin what was a beautiful neighborhood. She thinks it is a question of people just trying to get more money for the property, they don't want to sell it for what it is really worth: a 1,000 square foot home with a big lot, you can't get a lot of money for that. This is a question of someone who doesn't even live here wanting to get more money for his inherited property and the heck with the neighbors. It doesn't matter to a person who lives 100's of miles away. This is very upsetting to Ms. Rogan and she thinks it will be a big mistake for the Town to approve this. She really hopes the Board does not approve this.

Mr. Joyce confirmed that he is not looking to build a home for himself on the lot. He is looking to build a home to sell to someone else. The existing home is approximately 1200 square feet.

Linda Jenkin-Costanzo referred to the Town Conservation Committee and said she wants to keep the original Master Plan ideas that people like Kathleen Hallock had originally. She knows the person

proposing this has a sister who was willing to get this done as soon as the late owner died and it got held up in the estate for this very reason and to think that the person promoting this lives in a gorgeous home in Fairfax Virginia, it is like millionaires row. She would not put a dog in the existing house because it needs updating in every way. Ms. Jenkin-Costanzo said she took the late owner meals for the last 10 years. She and the other neighbors took care of this lady.

Mr. Joyce confirmed that his legal address is Fairfax, Virginia. Chairman Michnik noted that the applicant's address on the application is Brookfield Lane, which makes it look like Mr. Joyce is living at the property in question. Mr. Joyce said he and his sister own the Brookfield property. Katherine Wilson is the applicant's sister.

Chairman Michnik asked the applicant if he would come back with 150' frontage lots if the Board denied this request. Mr. Joyce said in the beginning he tried to do that, he submitted a schematic and was told it was very unlikely he could get that sort of carve-out through. He referred to Exhibit C and said he was told it would be impossible to get that sort of request approved. If he split the property evenly at 150' of frontage per lot, there is the possibility that he would need a variance for each lot for the minimum lot size and the driveway/parking area setback.

Mr. Joyce said it would be an entirely new septic system installed in the front of the property and to the south.

Chairman Michnik said his concern is the character of the neighborhood. This is something the applicant can adjust, it is not a hardship created by the Board.

Deputy Town Attorney Steve Bengart reads the criteria for the balancing test for an area variance: "the Board of Appeals shall balance benefit to the applicant with detriment to health, safety and welfare of the community. The Board of Appeals shall also consider: whether benefit can be achieved by other means feasible to applicant; undesirable change in neighborhood character or to nearby properties; whether request is substantial; whether request will have adverse physical or environmental effects; whether alleged difficulty is self-created." This is what the law says.

Mr. Joyce said he has a list of 7 addresses in the neighborhood with lots that are smaller than the proposed 125' frontage/.82 acre lot. Chairman Michnik said those lots/homes were established when the neighborhood was established, at that point the law could have been where they only needed 100' of frontage. Mr. Joyce said one of the neighbors said all the lots in the neighborhood are 150' and that this proposal would put the neighborhood out of kilter, he doesn't understand how a .82 acre lot puts the neighborhood out of kilter. Mr. McNamara said he thinks the issue is more the frontage than the acreage. Mr. Joyce countered by saying there are 7 lots in the neighborhood with less frontage. Mr. McNamara said in the immediate block there are only 2 lots that are under 150' of frontage. There are smaller lots in the neighborhood towards Gaskin Road.

Mr. Joyce asked if it is possible to obtain a variance for the parking area, Deputy Town Attorney Steve Bengart said he can apply for a variance. The Board should not address that request at this meeting because that is not what is in front of them this evening. Mr. Joyce said he is not opposed to a 150' frontage lot, but it would not be a straight property line because of the driveway and it was indicated to Mr. Joyce that it would probably not be approved.

Chairman Michnik would prefer a full board when voting on this or another request by the applicant. It would also be fair to the applicant if a full board was present. The applicant can ask for a decision tonight, or he can ask to have it tabled or he can submit a new request.

Based on the 125' which complies with Town Code and based on the 33,000 square foot which complies with County's requirement, Mr. Joyce said he fails to see what the problem is with granting the variance request. Chairman Michnik said he does not have enough acreage. Mr. Joyce said if he asked for 150' of frontage he would still not have enough acreage. Mr. McNamara said if he split the lot at 150' he would be at 98.7%.

Due to lack of motion, the request is **denied**.

Deputy Town Attorney Steve Bengart said the applicant can come back to the Board and submit a different plan.

Motion by Patricia Burkard, seconded by Richard McNamara, to **approve** the minutes for the meeting held on November 8, 2016, as written.

Richard McNamara    Aye                      Patricia Burkard            Aye                      Daniel Michnik            Aye

MOTION CARRIED.

Meeting adjourned at 8:13 p.m.

Carolyn Delgato  
Senior Clerk Typist