

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday February 12, 2019  
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                              Patrick Krey

Zoning Board of Appeals member absent: Jonathan Hickey

Town Officials present:

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

A moment of silence was held in observance of the 10<sup>th</sup> anniversary of the crash of Flight 3407.

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:01 p.m. The session ended at 7:16 p.m. and the Zoning Board of Appeals meeting opened.

Motion by Patrick Krey, seconded by Ryan Mills, to **approve** the minutes of the meeting held on January 8, 2019, as written.

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

MOTION CARRIED.

Other interested parties present:

Tim Smith, Jean & Dale Van Kuren, Bracken & Jillian Brainard, Katrina & Michael Hora, Dave Sutton

**Old Business**

**Appeal No. 1**(from Sept 2018)  
Timothy Smith  
Residential Single Family

Requests the Board of Appeals approve and grant:  
1.) A 1,096 square foot variance to allow a 1,296 square foot detached accessory structure.  
2.) A 6’ variance to allow a 22’ tall detached accessory structure.

Both requests apply to 6094 Long Street.

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

Chairman Michnik and Richard McNamara recused themselves from the discussion and vote on this agenda item and left the dais. Vice-Chairman Mills presided over the meeting.

### **DISCUSSION:**

Timothy Smith is present and said he submitted a picture that the Board requested at the last meeting. The pictures are labelled Exhibits A, B and C, and are on file.

Mr. Krey asked what Mr. Smith plans to store in the building. He replied saying he has an old car, a couple of jet skis and a grass cutter. He has much of this stuff in the garage that is attached to his house but he does not like to keep gas in there, he would rather keep it out back.

Mrs. Burkard asked how far the structure is from the back of the house. Mr. Smith estimated that it is 70' from the house. He confirmed that no one will be living in the proposed structure. Mrs. Burkard asked how he is getting access. Mr. Smith said on the north side of the house there is enough room to get back there, however he will not put a driveway there. He will only use that area when he has to get the jet skis out or move his vehicle. He spoke with the neighbor, Willie, who said he was fine with the setup. Mrs. Burkard asked if the applicant will have to drive on his neighbor's property when moving any items. Mr. Smith said no. Mrs. Burkard asked if the structure will be higher than the house. Mr. Smith said no.

Mr. Mills asked for details on the materials of the proposed structure. The siding color of the proposed structure will match the house. The renderings on file depict the final style of the building which includes the front covered area, front garage door, double door entrance and the shingles matching the shingles on the house. Mr. Smith said if he is going to change the roof on his house in the future to metal, can the roof on the accessory structure be metal now. Mr. Mills said he feels the roofs should be consistent whether they are metal or shingle. Mr. Krey said a condition can be added to the motion, if approved, that the materials for the house and the accessory structure must match. The decision on the material can be up to the applicant. Mrs. Burkard also agreed with this.

Mr. Mills asked if the applicant can decrease the size at all. Mr. Smith said he would not want to go smaller then wish he went bigger. Mr. Mills asked if Mr. Smith is amenable to a condition saying the height of the proposed structure cannot be taller than the house. That is acceptable to Mr. Smith. Mr. Mills asked what the landscaping plan is. Mr. Smith said he will definitely do some landscaping and make it look nice, his son-in-law is a landscaper. It will be similar to the front of his house. Mr. Mills asked if Mr. Smith is amenable to a condition, if approved, that there will be landscaping on three sides of the accessory building, but not the back of the building. Mr. Smith said yes. It will be a slab foundation and stick-built.

Neighbor notification forms are on file.

### **ACTION:**

Motion by Patricia Burkard, seconded by Ryan Mills, to **approve** Appeal No. 1 under Old Business as written with the following conditions:

- the north, south and east sides of the accessory structure is to be landscaped.
- no matter what material the applicant chooses for the roof it must be consistent with the main roof of the house.
- the height of the accessory structure shall not exceed the height of the primary structure.

**ON THE QUESTION:**

Mr. Krey said he will vote yes because it is helping from the street in terms of what is stored on the property. The structure itself will not be visible from the street so he thinks it will improve the street and the neighbors view. It will not produce an undesirable change in the neighborhood.

Mr. Mills said the unique conditions of this application, the unique nature of it, where it is located, the natural foliage around it and taking into account the parcels around it and that the structure is going to match the house and that the structure will be landscaped, he does not believe it will have any adverse impact on the character of the neighborhood, this helps distinguish it from other similar type variances.

Patrick Krey	Aye	Patricia Burkard	Aye
Ryan Mills	Aye		

**MOTION CARRIED.**

Chairman Michnik and Richard McNamara return to the dais.

**Appeal No. 3**(from Oct 2018)

Jean & Dale Van Kuren  
Residential Single Family

Requests the Board of Appeals approve and grant a use variance to convert a garage into a single apartment at 5266 Old Goodrich Road.

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

**DISCUSSION:**

Jean and Dale Van Kuren are present. Mr. Van Kuren said he submitted sketches as to how the outside would look. His daughter just moved back from New York City and they want to convert the garage into living space for her. There is an area that is currently paved that he plans on turning into greenspace, this area is depicted on the survey labelled Exhibit A, which is on file. Mr. Van Kuren has cost estimates on the septic system in the amount of \$10,200 from Jim Frey. This would be a separate septic system just for that building, not to be connected with the existing house. The paperwork for the estimate is filed and labelled Exhibit B. Mr. McNamara asked if the applicant has approval from Erie County for the septic system. Mr. Van Kuren was not aware that he had to do that ahead of time. Chairman Michnik clarified that the applicant must go to Erie County to see if they will be allowed to install a septic system, having an estimate does not approve the system. He is not sure the Board can move forward with a decision at this point. Deputy Town Attorney Steven Bengart said it is a separate municipal approval that the applicant has to obtain in order to put in the system, he said the Board could move forward but make it subject to them obtaining that approval, just as they need to meet all Building and septic requirements. Chairman Michnik said another option is that the Board can listen to what the applicant has to say and table it until they come back with the approval and any other items the Board is looking for.

Mr. Van Kuren said because of the uncertainty of being approved they did not go ahead with architectural plans, he just did rough drawings. He also has a copy of the documentation from the DEC stating they did soil tests and cleared the property, this was done because a gas station previously existed on the property. The documentation is labeled Exhibit C and is on file.

Mr. Krey asked what the applicant would do with the structure if his request is denied. Mrs. Van Kuren said it would probably remain as is. Mr. Van Kuren said he would not knock it down, he wants to fix it up and make it look nicer and blend in with the neighborhood.

Mrs. Burkard said she finds the submitted sketch just not enough information. She asked what type of material will be used on the outside of the building, will it continue to be block? Mr. Van Kuren said the block would be covered with either siding or a Stucco material. Mrs. Burkard asked if the window openings are staying the current size or will they be changed. Mr. Van Kuren said the windows along the back may be scaled down. There would be no garage. The south side would have four (4) windows. There is a parking area with an existing paved area that will be used for the driveway. Mrs. Burkard would like more details on what the building will look like. It will be a 2-bedroom, 2-bath apartment. Mrs. Burkard is not comfortable with the request.

Mr. McNamara asked if the applicant thought about using the existing curb cut since the structure is so close to the corner. He would like to see more of what the architecture will look like. Mr. Van Kuren said the curb cut on the south side is cut out to where the garage is. Mr. McNamara would like the Highway Department to look at this because it is so close to the corner. If the applicant could move it farther north, maybe 30'-40', would that make the intersection safer?

Mr. Mills agreed that the applicant needs to provide further details, there is just not enough to make a determination. There is not sufficient details in terms of materials, floor plan and general aesthetics.

Chairman Michnik voiced his concern and said the applicant needs to take the deed and survey and contact Erie County for approval of septic fields, the applicant may not have enough room. If the applicant obtains an approval for the septic, Chairman Michnik will ask the applicant to then submit drawings when he comes back before the Board. The drawings will also provide the applicant with a better idea of the cost of the project. He agreed that currently there is not enough information to make a decision. Deputy Town Attorney Steve Bengart said the applicant will probably not get an approval out of the County, but they will tell him (the applicant) whether it can even work. Mr. McNamara said the applicant may have to hire an Engineer to draw up plans and then take those plans to the County, he suggested the applicant speak first with the Erie County Health Department.

Mr. Van Kuren said he put \$100,000 into the remodeling of the Lamplighter Restaurant. Their primary residence is above the Clarence Center Preschool, they try to do things right. He requested the Board table the project so he can talk to the County about the septic system and gather other information as discussed. The Board is expecting the applicant to contact Erie County Health Department and let them see the survey, the estimate and what the septic field would look like. He also needs to come back to the Board with architectural drawings, elevations, floor plans, etc. The applicant needs to talk to Jamie Dussing of the Highway Department about the curb cuts, moving the driveway north or having a shared driveway, he should ask Mr. Dussing to write a letter with the result of their meeting. Chairman Michnik said the applicant needs to be aware that even if the Health Department approves the septic and the applicant comes back before the board with detailed plans, that doesn't mean the request is automatically approved, the Board still has to review the request and make a decision. Chairman Michnik makes it clear that the applicant could be out the money that he spent on the plans and still not be approved. Mr. Van Kuren understands. Mr. Krey suggested the applicant obtain more estimates so he can show financial hardship with reference to the request.

**ACTION:**

Motion by Patrick Krey, seconded by Richard McNamara, to **table** Appeal No. 3 under Old Business based on the information/requirements discussed and the applicant doing his due diligence moving forward.

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

MOTION CARRIED.

**New Business****Appeal No. 1**

Bracken Brainard  
Residential Single Family

Requests the Board of Appeals approve and grant a 41 square foot variance to allow for a detached accessory structure of 377 square feet located at 5171 Glenwood Drive.

Appeal No. 1 is in variance to §229-55(H) and previous ZBA approval on 12-8-15.

**DISCUSSION:**

There are five (5) neighbor notification forms on file.

Bracken Brainard is present and said he is looking to add a storage unit that is 16'x10' off the back of his existing barn. He wants it to keep the look the same. He knows he did things out of order and he apologized for that. His first variance was approved and he thought he could go up to 400 square feet. Mr. Brainard said he spoke with Deputy Town Attorney Steve Bengart twice over the phone with regards to the purpose of having the structure. The purpose is because Mr. Brainard has a handicapped daughter Ava, she has six (6) chickens that are emotionally supportive animals. He has a letter from the Clarence Central Schools therapist and a document from the primary doctor. Ava was born with hemiplegic cerebral palsy, the right side of her body doesn't work as efficient as everyone else's. He wants to do anything that is positive and will help his daughter grow. The school has seen the positive changes she has been going through. This is why they are asking for the structure. He has a neighbor who is very vindictive and who wants to attack his daughter. His neighbor's son was throwing dog feces in their yard, he picked up 14 bags of it. Mr. Brainard asked the son to stop walking the dog on his property and letting him do his business. At that point his neighbor turned him (Mr. Brainard) in to the Town, that's why he is here today.

Jillian Smith said as a result of filing the complaint with the Town the neighbors have also been in her back yard, as of yesterday, filming her residence. She called the State Police but did not want to waste their time, they did not end up coming to her residence. She said she should have made a complaint with the Sheriff's Office. The neighbor is harassing her over the structure, once it is in the Town's hands it is your decision, not theirs. Mr. Brainard said Mrs. Longo's husband, Darren Longo, works for the Attorney General's Office. Darren Longo allows his wife Kelly Longo to use his badge of power and every time Mr. Brainard calls the police, Mrs. Longo is out there harassing and video-taping the police and asking for their badge numbers and names, because she will retaliate because of her husband.

Chairman Michnik clarified that their neighbor's problems are theirs and they need to resolve them, the Board does not need to hear them, this meeting is about a structure.

Mr. Mills read correspondence dated February 5, 2019 from Joseph Saletta of the Building Department into the record, "On February 1<sup>st</sup>, I contacted home owner, Bracken Brainard to discuss a concern of incorrect dimensions submitted to ZBA for his hearing scheduled for February 12<sup>th</sup>. As applied for on the ZBA application, Mr. Brainard reports his existing shed, that was finalized on July 7<sup>th</sup>, 2016 was delivered to his home with dimensions of 12' x 18'. According to the Building Department's records, the existing shed was finalized with dimensions of 14' x 24' as applied. After asking Mr. Brainard to correct these mistakes on the ZBA application, Mr. Brainard states he no longer wishes to pay for the variance appeal and will remove the roof structure. If needed, Mr. Brainard will take this matter to court to have a judge determine a course of action. Mr. Brainard was notified we will need to issue a new violation notice and appearance ticket in the event he does not pursue corrective action on the illegal structure."

Mr. Brainard said he never gave Joseph the dimensions of his garage, the Building Department made an error on the first ticket they issued. Mr. Brainard called the Building Department and they issued a new ticket with the correct barn size. He never denied anyone access to the barn. Chairman Michnik said this meeting is strictly about the extension.

In response to Mrs. Burkard's question, Mr. Brainard said he was originally approved for 338 square feet, he is now asking for 377 square feet. When Mrs. Burkard stopped at the applicant's house, he told her he would not be coming to this meeting, so she did not look at the back of the building, she asked if the structure is what he wants to retain. Mr. Brainard said that is it, there would never be anything more. When the day comes that the chickens leave he is more than willing to take that structure down. The structure is to secure and keep the chickens safe, keep the animals out and keep them dry. He doesn't want a nuisance or a smell, he wants everything to stay right there. He would never put walls up or enclose it. It is difficult for Mrs. Burkard to make a decision on something she did not see.

Mr. Krey asked when the addition was put on. Mr. Brainard said he did it in September.

Chairman Michnik said if the Board asked the applicant to remove the additional structure how long would it take to remove it. Mr. Brainard said a couple months, it was not cheaply built, he used a lot of screws, materials and wood, there are concrete posts in the ground. There are two (2) steel columns that are concreted in with four (4) bars that are driven into the ground. Chairman Michnik said he is not sure he wants the structure to stand because of the condition it is in and the way it looks. Mr. Brainard asked what is wrong with the way it looks, it is all brand new wood, he kept the same size and the same roof hip as the existing barn, he did not change anything. Chairman Michnik said it is not shingled. Mr. Brainard said he stopped because it is not getting shingles, it is getting a metal roof just like the barn. He received the ticket and so did not purchase any more materials. It will be the same color and the same wood. He used his dog kennel to put in the ground to cage it in so the animals never come out of their cage. There is a coop which is surrounded by a cage. The fence is 8" in the ground so animals will not dig under it. Chairman Michnik referenced the 2015 variance and noted that the applicant was supposed to remove the metal storage shed, this is going on four (4) years, the applicant cannot be trusted to follow through with things. Mr. Brainard said the shed is off his property, it is on Niagara Mohawk's property. He does not have an easement with Niagara Mohawk. Mr. Brainard said he gave the shed to his neighbor, Michael Kozak who just had his septic system ripped up. The shed came back over to Mr. Brainard's property because he had to do \$1,000's of dollars of site work in the back yard because of a water drain problem that comes off the Wesleyan Church that was never taken care of by the Town. Chairman Michnik said the drainage is not what is before

the Board this evening. The shed was supposed to be removed, Mr. Brainard said it was. Chairman Michnik said as he is looking at the property today, it is still there. Mr. Brainard said no it's not. Chairman Michnik said as of right now it is on the applicant's property, the applicant does not have access to use the property from Niagara Mohawk nor does he have any authorization from Niagara Mohawk to put anything on that property. Mr. Brainard said that is correct. Chairman Michnik sees no reason for the shed to stand there, it is out of compliance. He said the applicant knew exactly what he was looking for when he previously came before the Board but he did not follow the rules and regulations set back in 2015 when the previous variance was approved. Mr. Brainard said he will appeal this and take it to court because he is not hurting his handicapped child for this when there are other structures on the street that have not been documented. There are other people who have done worse things, he did everything to make that structure look as complete and whole as his property. There are trespassers that come through his park, there are people who do things to his property and nobody wants to help him. He just wants to build something to keep his family at home and healthy and watch his daughter grow, he wants to give her chances that other people aren't.

Mr. Mills referenced the roofing structure and said there is an internal structure that the chickens are kept in, Mr. Brainard said that is correct. Mr. Mills said that has its own roof, Mr. Brainard said that is correct. Mr. Mills went on to say so there is a secondary roof structure. Mr. Brainard said that is when they are inside and when they come outside the second layer is what keeps them protected from predators. Mr. Mills asked what else the applicant will do to complete the structure, besides the metal roofing. Mr. Brainard said he will paint and the facial will go on front so you can't see it, everything else has deer net around it. All the columns will match the existing barn which is red stain. Mr. Brainard has invested \$3200 in the additional structure.

Mr. McNamara said there is no building permit so the foundation was not inspected, no one knows if it goes 42" down, there are no architectural drawings making sure this is stable. Mr. Brainard works for Millherst Construction and does site work every day, he wouldn't do it wrong. He can dig up the structure to show that it is 36" deep. Mr. McNamara said the applicant received a previous variance and now he put something else on without a variance, there is a lot of stuff that has to be OK'd. He needs a set of stamped architectural plans indicating what will work. Mr. Brainard said the building inspector came out and looked at the structure, the building inspector said Mr. Brainard did not need architectural plans because it is just a lean-to with four (4) posts, the building inspector approved the structure and said it is built it correctly. Mr. McNamara said a set of plans is required to get things passed in Clarence.

Mrs. Burkard asked what her options are since she did not see the project because she was told it was not going before the Board. Deputy Town Attorney Steve Bengart said she could recuse, ask the Board to table it so she can look at it or she can go on the information she heard tonight and vote on the project.

Mr. Krey asked what information the Board needs to obtain from the applicant that would address the concerns that were brought up. There are obvious issues with the appearance of the structure. Mr. Brainard said he can measure and draw it up to scale and if he has to get a stamped plan he will take it to an architect and get it stamped, then bring it back to the Board. Mr. Krey said this is self-created, he put it up without having a variance approved. He understands that Mr. Brainard spent a lot of money on it but that is the risk he took putting it up without a variance being approved in advance. As it stands, Mr. Krey would vote against it this evening, however he would like to see the applicant work towards changing the structure to make it more acceptable. Mr. Brainard said absolutely, he would be willing to do that. Deputy Town Attorney Steve Bengart asked if the applicant would still want the structure if chickens are not allowed to be there. Mr. Brainard said no he would not need the structure.

Chairman Michnik clarified that the vote this evening is for the structure, nothing else. He also clarified that if this agenda item is tabled this evening, does not mean it will be approved at a future meeting. The applicant asked for the request to be tabled so he can put more thought into it. Mr. Mills said it will be up to the applicant as to when it will be back on the agenda. Deputy Town Attorney Steve Bengart reminded everyone that the building department is still involved and is violating this as it is going along. Mr. Brainard said he has talked with Joe from the Building Department on numerous occasions. Chairman Michnik suggested Joe attend the next meeting. It is clarified that Mr. Brainard misspoke earlier and did not recently speak with Deputy Town Attorney Steve Bengart, he spoke with him 6 months ago.

### **ACTION:**

Motion by Patrick Krey, seconded by Patricia Burkard, to **table** Appeal No.1 for one (1) month. Within that month the applicant is to speak with the Building Department to see what needs to be done to the structure to address some of the concerns that were voiced at this meeting, he needs to obtain documentation from the Building Department with regards to their conversation. This does not mean the request will be approved.

### **ON THE QUESTION:**

It is clarified that the Board is looking for information from the Building Department related to what is needed for a permit and what the finished appearance of the structure will be to bring it into compliance. Deputy Town Attorney Steve Bengart said they are looking for documentation from the Building Department as to what would have been required had it gone through the Building Department in advance of building it. The applicant said he understands what is being asked of him.

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

MOTION CARRIED.

### **Appeal No. 2**

Katrina Hora  
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 5'9" variance to allow a 40' 9" tall residence located at 8090 Lapp Road.

Appeal No. 2 is in variance to §229-33(A).

### **DISCUSSION:**

There is one neighbor notification form on file and one Certified Receipt for the second form that was mailed.

Dave Sutton, of Sutton Architecture, is present and said there are fully designed renderings of the proposal on file. He noted that 35' will be restricting. There are 10' ceilings on the first floor and 9' ceilings on the second floor which are contributing factors to the overall height of the building but primarily they are talking about the roof line. The roof line of the main house is 9/12, it is not excessive in its pitch. The only way to bring the building into compliance is if the pitch was brought down to a 6/12, architecturally that is heading in the wrong direction in terms of what the applicant is trying to achieve with the design of the house. There are some secondary roof lines as part of the original design above the garage and at a



secondary area, they have to maintain the 9/12 pitches at these roofs in order to get the space required for the area that will be occupied above the garage. If the main pitched roof is dropped but not the secondary roofs, it creates an architecturally challenged building, it is clumsy. The original design shows all three of the roof pitches have a nice sequence and a nice step down to them. If this is changed there will be some very awkward details. If the variance is approved it will benefit the design and will far outweigh any detriment that would be associated with the variance request. The applicant does not see any negative to this request. The house is minimum of 200' from any neighboring structure. Visually, the impact will be non-affecting to the neighboring properties, it will not change the character of the neighborhood, they are not creating a scenario that is obnoxious.

In response to Mrs. Burkard's question on the size of the house, Katrina Hora said it is 4,925 square feet in size.

Mr. Mills asked for details on the materials being used. Mr. Sutton explained they are proposing vinyl siding, architectural asphalt shingle, azec trim, there will be a lot of effort put forth in the cornice lines, the dental moldings and the appropriation of the dormers and the trim work. The chimneys will be brick veneer.

The house will have three (3) bedrooms, three (3) full baths and (2) half baths. Chairman Michnik asked the estimated cost of the house. Ms. Hora said \$650,000-\$700,000. The color of the outside of the house will be white. The house will be on five (5) acres of land.

**ACTION:**

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 2 as written.

**ON THE QUESTION:**

Chairman Michnik said the architect has shown proof of the roof lines and the texture of the material that is going to be used.

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

MOTION CARRIED.

Meeting adjourned at 8:30pm.

Carolyn Delgato  
Senior Clerk Typist