

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday March 10, 2020
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
Richard McNamara

Vice-Chairman Ryan Mills
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 Patrick Krey, to **approve** the minutes of the meeting held on December 10, 2020, as written.

Patrick Krey	Aye	Richard McNamara	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 7:16 p.m. and the Zoning Board of Appeals meeting opened.

Other interested parties present:

Ray Skaine	Patrick McNamara	Paul Kazmierczak	Anthony Ricchiazzi	Rosanna Ricchiazzi
Brian Burr	Sam Burr	Frank Capodagli	Michael Dalfonso	Anthony Cross
Sue Cross	Glen Gafter	John Miosi	John Fisher	

Old Business

Appeal No. 3 (from August 2019 Meeting)

Richard E. McNamara
Industrial Business Park

Requests the Board of Appeals approve and grant:

- A.) A 10' variance to allow a 10' side yard setback on the west property line.
- B.) A 10' variance to allow a 10' side yard setback on the east property line.
- C.) A 15' variance to allow a 10' rear yard setback on the south property line.

All requests apply to 8615 Roll Road for the construction of industrial accessory structures.

Appeal No. 3 is in variance to A.) §229-102(F), B.) §229-102(F), C.) §229-102(G).

Richard McNamara recuses himself and leaves the dais as he is the applicant.

Chairman Michnik noted that Mr. McNamara is a member of the Zoning Board but that does not influence any decision made for this agenda item.

DISCUSSION:

A representative said the applicant met with the Town Board in 2019 which was then referred to the Planning Board and met with them in December 2019. A Negative Declaration under the State Environmental Quality Review Act (SEQRA) was issued. The issue of the variance, as stated, is what they are seeking today.

Mr. Callahan said the Planning Board reviewed the application, issued a Negative Declaration under SEQRA, denied the request based upon the violation of zoning, the applicant is now back in front of this Board requesting a variance to the Code for the setback.

There are three (3) neighbor notification forms on file.

Mr. Krey asked if it will be done in phases, the representative said yes.

Mr. Mills asked for details on the buffer from Roll Road. The representative said the main buffer will be any landscaping that is there now, the existing parking lot spaces will remain. Mr. Mills asked if the 6' high wood stockade fence with sliding gate is going to be implemented, and will it shield what is going on back there. The representative said that fence will remain at least through the planned expansion, the applicant would comply with whatever the Board would require there. Patrick McNamara said they do plan on keeping the fence. The representative said the fence just might change in style so that it won't be transparent.

Mr. Mills asked if the applicant knows the percentage of use for rental versus additional business space. The representative said they don't know, but the initial expansion is strictly for the business, he confirmed that Phase 1 is allocated towards the business. Phase 2 and 3 may be rented. Mr. Mills asked about the firewalls between units, the representative said they have not planned that far ahead yet.

Mr. Callahan clarified for the record that there was not a denial from the Planning Board, it said any future review of this has to go back through the Planning Board. Also, all uses have to be approved by the Town Board in the Industrial Park Zone, this included landscaping.

Chairman Michnik asked when the project will start and when will Phase 1 be complete. The representative said Phase 1 will start as soon as approvals are obtained and will take 1 to 2 years to complete. It is not known how soon Phase 2 would start, it will be business-driven. Chairman Michnik went on to ask if they could approve Phase 1 and when 2 and 3 come available, the applicant would come back to the Board for those approvals. Deputy Town Attorney Steven Bengart said Phase 2 and 3 will have to come back before the Planning Board and the Town Board anyway. He noted that there are a lot of protections in place and what the Zoning Board of Appeals needs to focus on if they are able to grant the variances being requested, not the ultimate completion of the project. Chairman Michnik voiced his concern saying they are looking at a project that could last 2-9 years, and they are approving something that may start in year 7 based on current conditions. He suggested asking the applicant to come back to the Zoning Board of Appeals for

Phase 2 and 3, and asked for confirmation from the Deputy Town Attorney if this can be done. Deputy Town Attorney Steven Bengart said yes you can grant variances that allow each phase as they come in.

Mr. Mills asked what type of material is being used on the outside of the building. The representative said it will be a metal roof and steel facades.

ACTION:

Motion by Patrick Krey, seconded by Daniel Michnik, to **approve** Appeal No. 3 under Old Business, as written.

ON THE QUESTION:

Mr. Krey said the benefit to the applicant has been explained in previous minutes. After visiting the site and viewing the surrounding properties Mr. Krey said there will not be an undesirable change to the neighborhood. The neighbors have been notified and have no issue with it. The street view will not have a big visible change.

Patrick Krey	Aye	Ryan Mills	Aye	Daniel Michnik	Aye
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MOTION CARRIED.

Richard McNamara returned to the dais.

Appeal No. 8 (from July & August 2018 Meetings)

Anthony Ricchiazzi & Rosanna DiSalvo
Agricultural Floodzone

Requests relief from a previously approved condition of approval requiring the front yard setback of a proposed residential single-family home to be between 500' and 650' at 9075 Sesh Road.

Appeal No. 8 is in variance to Zoning Board of Appeals Meeting Minutes of September 13, 2011.

DISCUSSION:

Rosanna Ricchiazzi is present and said at the last meeting they were given instructions by the Zoning Board of items they wanted addressed for further information obtained. One item was to meet with the Town Engineer, Timothy Lavocat, they met with him and it was explained to them what was required for the Engineering Department concerning the drainage. The applicants were also asked to get information from the Army Corp of Engineers, which they did, so they have written confirmation from them as well. Mr. Lavocat reviewed all the required documents and issued a memo that states the grading and drainage plan was approved based on the standards of the Engineering Department, the memo is on file.

Chairman Michnik asked what type of variance they are exactly looking for. Ms. Ricchiazzi said they do not want to build at the existing designated mark which is 400' to 650' back (measurements stated by Anthony Ricchiazzi). They want to build closer to the road at a maximum of 150' setback. If the applicants need to go a little further back to meet the Zoning Boards approval, they are willing to do that, they just don't want to be at the 500' setback.

Mr. Mills asked why the preference is within the 100'-150' range, is the main reason cost? Ms. Ricchiazzi said yes. Mr. Mills asked if, when the applicants acquired the property, they knew about the previous variance. Ms. Ricchiazzi said they did not know about the variance, had they known there would have been a question as to whether they would have even bought the lot. Mr. Mills asked what the cost differential would be with putting the house back 150' versus the 500'-650'. Mr. Ricchiazzi said there is a \$30,000 cost differential just for the driveway.

Chairman Michnik asked if there was an attorney that did the closing. Ms. Ricchiazzi said yes, it was an attorney that she works for and there was nothing in the title report or deed restrictions, nothing mentioned that. The cost of the lot was \$55,000, it is almost 16 acres. Chairman Michnik asked if there is a plan for the back area of the property, both applicants said no. Ms. Ricchiazzi said they are no longer going to put a pond in because they were told they could not. Mr. Ricchiazzi said there is already a pond back there, it is the neighbors that flows onto their property.

Chairman Michnik asked if the Board rescinded the original motion, in his opinion they would probably put a maximum of 150'-175' on the motion. He asked if that is acceptable to the applicants. Ms. Ricchiazzi said absolutely, and went on to say that she is not asking the Board to do something out of the ordinary as the original setback was probably at 150' and if the drainage solves the problems that the neighbors have she honestly does not know why this would be a no vote.

Mr. Callahan said this lot was established with a 500' setback so from a legal stand point 500' is what the law says. The original owner split off parcels and this is one of those parcels. Ms. Ricchiazzi said there are houses on the street have different setbacks.

Brian Burr said his father was the owner of the original property and it was split up into different pieces. Mr. Burr referenced minutes from past meetings where the Chairman said the variance which was approved in 2011 goes with the property and cannot be changed. Deputy Town Attorney Steven Bengart said while the establishment becomes the basis to undo it, regardless of what the Chairman may have thought, the law is the law, and in order to overturn such a variance it will require a Super Majority, but it can be done.

A member of the audience said he knows the Town has a goal of maintaining the rural nature of the area, if you drive down the street you'll see all the houses that have been built in the last 20 years are all recessed on large pieces of land. Nobody has to have their home or land converted into Cheektowaga, it would have been easier to just live there. People move to the north country to have a little space, that's the goal. Chairman Michnik said the applicants are trying to create some space for themselves at 150'. The same member of the audience said he is annoyed because at the last meeting due diligence was discussed where one of the requirements was that the neighbors need to talk and be contacted so that everyone is satisfied, he has heard nothing for an entire year. He has been in the Zoning Office every month for a year trying to find out what is going on, it was all a secret. Chairman Michnik said it was not a secret, there were no meetings for the months of January and February, so there were no actions being taken on anything.

Ms. Ricchiazzi said after the last meeting her and her husband were making a conscious decision of what they were going to do. To make it easier they looked at building back 500', they did as much as they could to try and make it work financially. So for many months they decided to try to build at 500' back, which is why they were not back to the Zoning Board. Then they decided not to go back 500' because they could not financially do it. She spoke with Supervisor Casillio and he advised her to speak to Tim Lavocat, and she did in December. By the time all the paperwork was done it was March.

Brian Burr referenced the drainage issue and said his neighbor has drainage issues because of the house that was recently built next to him, Mr. Burr does not want that to happen to his property. Chairman Michnik said his neighbor should probably talk to the Engineering Department about his issue with drainage. He suggested Mr. Burr bring his concerns to the Town Engineer.

Mr. DiSalvo is the contractor and is Rosanna's father. He said the house will be approximately 2500 square feet. Mr. Mills asked, besides the driveway, what is the additional cost at having the house at 150' versus 650'. Mr. DiSalvo said there would be extra costs for water lines, plumbing, it would be about \$20,000 for water lines to go 500' back. Power lines underground would be an extra \$17,000. Gas lines would cost extra, although Mr. DiSalvo does not know how much. The foundation would cost more as well because further back there is a lot of problems with water. The foundation would cost \$10,000 more.

Chairman Michnik said once the trench is dug, wouldn't the applicant be able to put the water line, the gas line and the electric line all in the same ditch. Mr. DiSalvo said the ditching is not the issue, it is the piping that costs more. Chairman Michnik said he ran some numbers and noted the person who gave an estimate for a 1" line going back that far should be aware that there would not be enough pressure, the pipe should be at least 2".

Mr. McNamara asked what the cost would be for building in/near the floodzone, Mr. DiSalvo did not know the price but his engineer said it will be costly.

Sara Burr said the property near hers is always wet which increases the bugs and the frogs because it is not covered, Mr. Capodagli's is covered. Between the two properties a trench was dug by the previous owner where water literally sits and is on an angle. They thought they were fixing the drainage this way. Chairman Michnik said if Mr. Lavocat needed that to be enclosed he would have required that. Deputy Town Attorney Steven Bengart said the Law is clear and states what exists cannot necessarily be helped, a lot of times it is helped just by the drainage that takes place within the new property that is going to be developed. You cannot have any new water run off as a result of development, it may not solve a problem that existed previously but it cannot make it worse. Ms. Burr said the water is existing but it is a "new" existence. Mr. Burr said in the 2011 minutes it said the same thing, you cannot do anything to the property that will make any problems for your neighbors. He has never had any water in his basement, they dug the trench and months later he got water in his basement. Ms. Burr asked if she has water in her backyard who comes to fix it. It is clarified that if the variance is approved and the Burr's notice more water coming onto their property they should contact the Town Engineer. Another audience member said the pond is the problem back there, when it rains just a little bit the pond exceeds and runs off to nearby properties. Deputy Town Attorney Steven Bengart said no matter where the house is built the water has to be controlled. Another member of the audience said the pond has been there for as long as he has and he has never had a drop of water in his house.

ACTION:

Motion by Ryan Mills, seconded by Patrick Krey, to **rescind** the original variance granted for a setback between 500' and 650' at 9075 Sesh Road. A building permit must be pulled within one (1) year of this rescission being granted.

ON THE QUESTION:

Mr. Mills noted that the applicants have demonstrated a financial hardship, they provided testimony that they were not aware of this prior variance being granted prior to them purchasing the property. They have provided some numbers through testimony as well as some documentary evidence of the additional cost. There is evidence of other homes on the street with a similar setback that the applicants are requesting.

Deputy Town Attorney Steven Bengart noted that in order to rescind a previously granted variance, it requires a Super Majority, which in this case means all four (4) of the Board members must vote in favor of it.

Mr. McNamara said if the request is rescinded, when the applicant anticipates starting the project, Ms. Ricchiazzi said as soon as they can get the permits.

Mr. Mills asked if it is acceptable to the applicants that a condition be placed on the motion that the permits must be pulled within one (1) year or the rescission would no longer be in effect. This is acceptable to the applicants as they plan to start immediately. This condition is subsequently added to the motion.

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

MOTION CARRIED.

Deputy Town Attorney Steven Bengart said it would be prudent to establish an exact measurement for the setback.

Mr. Capodagli said he discussed this with Mr. Burr. He and his wife are much older than the applicants. He is too ill to move and asked if anyone knows the maximum legal height of a privacy fence. Mr. Callahan said the maximum height for a fence is 6'.

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** up to a maximum of 150' setback for the construction of new home at 9075 Sesh Road. This is to run for one (1) year from the date of being granted, the Building Permit must be pulled within one (1) year. If the Town Engineering Department has any issue with this, he can amend it accordingly. The applicant is to work with the Town Engineering Department to see if anything can be done about the water concerns on the east side of the property. Mr. Mills said the trench is on their property and he asked that they work to alleviate any issues.

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

MOTION CARRIED.

New Business

Appeal No. 1

Michael J. Dalfonso
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow a detached accessory structure (garage) located within the front yard setback.
- 2.) A 112 square foot variance to allow an 832 square foot detached accessory structure located within the front yard setback.

Both requests apply to 5783 Goodrich Road.

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

DISCUSSION:

There are three (3) neighbor notification forms are on file.

Mr. Dalfonso is present and said he would like to put a garage in his front yard because his house is significantly setback further than everyone else's, which leaves 19' between his house and the house behind him. When the road was cut in it did not leave him enough side yard. He does not currently have a garage on his property. The garage would be in line with everyone else's home, as his home is in line with all their garages.

Mr. McNamara asked if the applicant looked at attaching the garage to the front of the house. Mr. Dalfonso said if he attached it to the front of the house he would lose all his side yard and lose all the space in the front of his house, and would not be able to utilize the space in the front of his house plus it will cost much more money. He'd really rather not have an attached garage. The proposed garage is 26' by 32', no higher than the code requirements or his house. There will be a pad for the foundation. There will be a gas line for a small heater and it will be insulated. There will be landscaping on the front and if landscaping is a condition of the motion Mr. Dalfonso is ok with that. There will be a window on the side of the garage that faces the road, the doors will be facing the Boxwood side, it will have vinyl siding and an asphalt roof to match his house. There will be flower beds on the road-facing side.

Mr. Krey asked if there will be windows on the structure. Mr. Dalfonso said there will be one facing the street, one on the back side of the garage, similar to the picture that is on file. It will have window treatments that match the house. Mr. Krey asked why the applicant needs 832 square feet. Mr. Dalfonso said everything he owns is large. At 26' wide it lets his car doors not hit the sides.

Mr. Mills asked if the applicant plans to operate a business out of the proposed garage. Mr. Dalfonso said no and is ok if this is made a condition of the motion. He will be using it for hobbies and a man cave. The square footage of the home is 1390. Mr. Mills asked if he could get away with less square footage on the proposal. Mr. Dalfonso said he would rather not and then asked how small are they suggesting. Mr. Mills as what the applicant could get away with in terms of accomplishing what he needs. He said he could go 24' by 30'. Mr. Mills asked if the applicant explored or had anything drawn up attaching the garage. Mr. Dalfonso said he would lose the picture window and another window in front of his house, and his wife would rather it not be attached. Mr. Mills voiced his concern that there are not similar structures in the nearby vicinity and asked if Mr. Dalfonso could point to any in the neighborhood. Mr. Dalfonso could not but said nor are there any other houses that sit back like his does. Placing the garage in the proposed location

would make the street look more uniform. Mr. Mills then voiced his concern noting that there would then be two (2) large structures on the parcel. Mr. Dalfonso said his neighbor's property is set up almost the same way, only inverted.

Chairman Michnik asked if there was a garage that was converted to living space. Mr. Dalfonso said not since he has been living there, which is since 2011. Chairman Michnik asked if the Boxwood development was in place when Mr. Dalfonso bought the house. Mr. Dalfonso said yes. Chairman Michnik said he is sure Mr. Dalfonso was well aware of the limitations when he purchased the property. Mr. Dalfonso said he understand what the Chairman is saying. Chairman Michnik asked if the applicant looked at where the trailer is currently parked and turning that into a single garage. Mr. Dalfonso said that would put him too close to the right-of-way of Boxwood Road. Chairman Michnik asked why couldn't he move the garage to where the trailer is currently parked and attach it to the house on that side, that way you wouldn't lose the front window. Mr. Dalfonso said he supposes it is possible but that is where the utilities come into the house. He understands what the Chairman is saying but he does not want an attached garage. Besides the increase in cost, another reason is he knows, as a firefighter, how many houses burn because an attached garage started on fire.

ACTION:

There is no action taken.

ON THE QUESTION:

Deputy Town Attorney Steven Bengart said "no action" is a denial. The applicant has the option of changing his request and coming back before the Board.

Appeal No. 2

Anthony Cross
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 2' variance to allow an 8' side yard setback for the construction of a detached garage at 8030 Lapp Road.

Appeal No. 2 is in variance to §229-34(F)(2).

DISCUSSION:

There are four (4) neighbor notification forms on file.

Mr. Cross is present and said he is looking to build a 2-car garage, which is very similar to the garage that was there three (3) years ago. He has lived there for 13 years and has saved money for a new garage. The old garage was dilapidated and falling down. The only difference is they will have a 2-door garage instead of a single door and the garage is a bit bigger.

Mr. McNamara asked if the driveway is new. Mr. Cross said it was put in in 2017. This garage is approximately 2 feet wider than the previous one.

Mr. Mills asked why he needs the additional 2'. Mr. Cross said it gives more room to open the car doors without hitting the other vehicles when inside the garage, it was too close without the extra 2'.

Chairman Michnik asked if anything is planned for the back of the garage. There will be 7-8 feet of the concrete slab that will not have anything on it, they will use it for a recreational space for barbecue's and a picnic table. Atlantic Garages will build the garage, it will be stick and cinder block will go around the perimeter of the garage on the concrete. This will ensure that the garage is 6" above the line that Mr. Cross talked to David Burke about. There will be basic vinyl siding on the garage the same color as what is on the house.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 2 as written.

ON THE QUESTION:

Mr. Krey said he is voting for this because it is replacing a similar size garage, therefore it is not going to have an undesirable change in the neighborhood.

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

MOTION CARRIED.

Appeal No. 3

John Miosi
Residential Single Family

Requests the Board of Appeals approve and grant a 20' variance to allow an 80' side yard setback for the construction of a pond located at 5815 Newhouse Road.

Alternatively, applicant requests a variance from the required 3' to 1' side slope requirement, which would allow for the required 100' setback requirement.

Appeal No. 3 is in variance to §93-19(D)(1) and §93-19(D)(4).

DISCUSSION:

Mr. Miosi is present and said the lot is 250' wide, the code says you have to stay 100' off any lot line to have the pond put in, this would only allow Mr. Miosi 50' feet for the pond. He went on to say that at a 3-1 pitch, which is required by the Town, the deepest he could dig the pond is 8'. He spoke with the DEC and was advised that 12' is needed to have an adequate fish pond. He has two options, one is to ask for the 20' variance and the other is to dig a trench. He prefers the 20' variance but it open to digging the trench. If he receives the variance he can maintain the 3-1 pitch all the way around, and it would be a better, safer pond.

Mr. McNamara asked about the drainage in the back. Mr. Miosi said it is fine, he has already paid for the topographical and the soil test. It is almost 550' off the road. He talked to the DEC about the creek in the back and they are considering him out-letting to the creek, as they want relief for the creek. There will be no inflow. All fill will stay on the property.

Mr. Mills asked about the oxygen flow of the pond. Mr. Miosi said a wider pond will provide a better flow of oxygen, it will make it a better quality pond and will make it a healthy pond. The survey from Bissell Stone dated January 13, 2012 is on file as Exhibit A and shows the 2 options that Mr. Miosi has. This will be a fish pond for Mr. Miosi's personal use on his property. He will put Bass, Perch and Sunnies in there. He is going to build a 2300 square foot ranch that will be 175' off the road, which they received a variance for. There will also be a pool on his property.

Chairman Michnik asked if the pond will be located directly behind the house. Mr. Miosi submitted Exhibit B which is a sketch, to scale, that shows the location of the house and the pond on the property. The pond has to go east and west because of the 100' limit on either side.

John Fisher, of 5835 Newhouse Road, is present and said he has no issues with the request.

Mr. McNamara asked if there is a limit on the size of a pond. Mr. Callahan said no, just the setback and the 3-1 slope.

The applicant would need a variance for option 2.

Mr. Miosi said there are properties that are wetlands and landlocked on all sides of his property. He tried to buy neighboring property but it was too expensive.

Mr. Mills asked about landscaping around the pond. Mr. Miosi said he will build the pond up on the edges with the extra soil, he will maintain the property back to the pond. He would like to plant Evergreen trees and foliage around the pond on the berm.

ACTION:

Motion by Richard McNamara, seconded by Daniel Michnik, to **approve** Appeal No. 3 as written for option one (1). The pond will only be a fish pond, it meets the depth for oxygen for the fish. The 3-1 slope will be maintained as depicted in Exhibit A.

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

MOTION CARRIED.

Meeting adjourned at 8:48 p.m.

This meeting will be taped.