

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday March 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
Richard McNamara	Jonathan Hickey
Patrick Krey	

Zoning Board of Appeals members absent: Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Paul Shear (arrived at 7:06pm)

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on February 12, 2019, as written.

Patrick Krey	Aye	Jonathan Hickey	Abstain
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Brian P. Brady	Jack Thomann	Julie McCullough	Joe Miano
Scott W. Baehre	Jay Capozzi	James Braun	Herbert Guenther

Old Business

Appeal No. 2 (from Nov 2017 Meeting)

John Thomann
Residential Single Family

Requests the Board of Appeals approve and grant a 6" variance to allow a 22' front yard setback for a recently constructed attached accessory structure located at 4290 Fireside Drive.

Appeal No. 2 is in variance to §225-52(A)(1). *Previous variance granted on 11/14/17.

DISCUSSION:

Brian Brady is the local architect who prepared the drawings for the original plans which were used to construct the garage, he made a mistake in the plans. Mr. Hickey asked if there is anything outside of Mr. Brady's letter dated February 6, 2019 that Mr. Brady needs to say. The letter is on file. Mr. Brady said no

and went on to explain that after the previous variance was granted he went to do the drawings and found that he forgot that the ground floor of the house is 4 inches higher, so he had to add a couple steps and a landing.

Ryan Mills read an e-mail dated March 12, 2019 into the record, "Dear Planning Department, Please accept this e-mail as my comment on the construction for 4290 Fireside Dr. that was recently done. My concern is twofold and regards the placement of the new driveway that was located on the corner of Nottingham Terrace and Fireside. That corner is essentially a curve - a blind curve if you are approaching from the west on Nottingham. When cars are parked on the curve, they are blind to anyone coming around the corner. Secondly, the driveway itself looks like the road with an island. I would suggest that there needs to be signage to alert drivers to the blind driveway and that there be no parking allowed anywhere on the curve or after it. Safety first. Thank you for your attention to this. Mary Ann Bliznik, 4250 Fireside Drive, (716) 984-3173." The e-mail is entered into the record as Exhibit A.

Mr. McNamara referenced Mr. Brady's letter which indicated there is 41 square inches, which is a triangle. Mr. Brady thinks the measurement is 9" by 9".

Councilman Paul Shear, Liaison to the Zoning Board, as arrived at the meeting.

Julie McCullough, of 4251 Fireside Drive, sent an e-mail to Mr. Callahan but it was late in the day and was not received in time for this meeting. Ms. McCullough said she finds it difficult to understand that a 6 inch error occurred violating the variance granted in November 2017 to 4290 Fireside Drive. I know it is nearly impossible to ask the removal of the garage, but could the variance be granted with the requirement that the window in the back of the garage, which looks down into Mr. Miano's backyard, be eliminated. This could be a solution for Mr. Thomann as well as Mr. Miano. The window is really intrusive to Mr. Miano's backyard. Ms. McCullough lives down the street, the garage does not affect her in any way. She asked if the Town came out and checked on the garage when it was being built. Chairman Michnik advised her the Building Department handles that. She asked if the Building Department saw the situation, Chairman Michnik does not know and advised her to contact the Building Department with her question. Mr. Callahan said at some point the mistake was caught and that is the reason they are before the Board this evening.

Joseph Miano, of 4289 Oakwood Drive, said this request directly affects his family. He asked for clarification on what is happening here tonight, is it a variance on the previously granted variance? Is this typical? Chairman Michnik said if there is an error and it's caught by the Building Department then the applicant has to come back before the Board for review. Mr. Miano brought a photo with him to show how it affects his property, the window at the back of the building looks directly into his swimming pool, it can't be any more intrusive. His wife and her mother and aunts sit back there for privacy and now feel very uncomfortable because of the window. The project was supposed to take a couple of months but it took 6 and a half months. Chairman Michnik said that is part of construction. Mr. Miano said this happened over the summer so all the construction workers were able to spend the mornings and afternoons looking down at his pool, this is what created the uncomfortableness and the anxiety. He asked if there is any way to come to a compromise and have that window removed. Chairman Michnik said this is not a negotiation between Mr. Miano and the Board, it is a 6" variance that was brought before the Board. The Board cannot negotiate Mr. Miano's issue. Deputy Town Attorney Steve Bengart said the Board does not have to approve the request, he does not know if the applicant is willing to consider such a thing. It is not the Board's job to negotiate but they can vote it up or down. The "down" could mean he would have to fix the variance, the Board can also place conditions on the approval. Mr. Miano asked the Board to consider his request, he feels it is a fair request.

Mr. Thomann said he blocked all the panes of the window so he can't see out it, it's glazed like a bathroom window. He wrote a letter to Joe advising him there will be arborvitae planted along the building, however it will take a few years to grow up. It is clarified that if the window is closed no one can look out it. He was also going to install something on the inside of the window so that if he opened the window to get a breeze he couldn't see out it then either. He pointed out that the garage was put in exactly the way it was approved, the mistake was in the measurements done by the architect, the garage is not any bigger than what was approved.

Mr. Hickey asked if what Mr. Thomann has explained about addressing the window issue satisfies Mr. Miano. Mr. Miano asked if anybody can open the window and look out. Mr. Thomann said yes but he is not going to do that. Mr. Miano said Mr. Thomann has a very large family that visit on a regular basis. Mr. Thomann said the upstairs to that structure will be locked, he won't let anyone up there.

Chairman Michnik noted that when he visited the site there was nothing on the second floor and he did see the screen on the window that Mr. Thomann is talking about. He went on to suggest Mr. Thomann put a nail in the window so it cannot be opened, he asked Mr. Thomann if he was amenable to doing this. Mr. Thomann said yes he can make it so it can't be opened, but if he wants to open it to let a breeze in there will be a piece in the window that you can't see through. He would use a louver so the air would come through but you couldn't see through the window. Chairman Michnik also suggested using black screens. Mr. Thomann does not spend a lot of time at this home during the summer, he has a lake house.

Mr. McNamara asked what the upstairs is used for. Mr. Thomann said it will be his work shop.

ACTION:

Motion by Patrick Krey, seconded by Ryan Mills, to **approve** Appeal No. 2 under Old Business, as written.

ON THE QUESTION:

Mr. Mills noted that due to the size of the variance and in looking at the totality of the project it does not have an overall impact on the character of the neighborhood.

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

MOTION CARRIED.

New Business

Appeal No. 1

Scott W. Baehre
Residential Single Family

Requests the Board of Appeals approve and grant a 1,392 square foot variance to allow a 2,112 square foot detached accessory structure located at 5015 Salt Road.

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

DISCUSSION:

There is one (1) neighbor notification form on file. Scott W. Baehre is present and explained he wants to put up a pole barn. He is no longer looking for a 2-story structure. He is looking for 32' for the structure with a 12' overhang on the left side, the structure would be on the south east corner of his property. He does not currently have a garage and he would like some place to park his cars in the winter. He would also like to store his boat, his kayaks, his bicycles, his four-wheeler and his lawnmower. Currently he has two (2) and a half small utility sheds that are not in good condition. He would also like to incorporate a wood shop into the structure for his personal use. He bought the house 17 years ago and at that time he was told sewers would come down the road, the septic system was on the north side of the house so that would have been a perfect spot for a garage once the sewers were installed. The sewers never came so he has never been able to put up a garage. He recently purchased the strip of land to the right side of his property from Erie County, this is where he wants to put the garage. He would like the pitch of the garage similar to his house which is a 10' pitch. He went on to say most pole barns are sheet metal, he would sheath it and put white vinyl siding on it to match the house. Within a year he will be putting a new roof on his house, so it will match the garage. He submitted photos which shows the structures of his neighbors directly across the street, the property immediately to the north of him has a larger building than what he is proposing. The bike path is immediately south of his property and he would like some privacy from it.

Deputy Town Attorney Steve Bengart asked if Mr. Baehre has the deed showing he has ownership of the property to the south that he spoke of purchasing from Erie County. Mr. Baehre said yes he does but it is in a safe and the key is with his wife who is out of Town at the moment. Deputy Town Attorney Steve Bengart asked if he has a survey to go with the deed. Mr. Baehre said the survey that Deputy Town Attorney Steve Bengart is looking at is the survey. Deputy Town Attorney Steve Bengart said in order for the Town to act on his request they need to know that it is his land. Mr. Baehre said he understands. Deputy Town Attorney Steve Bengart said there has been nothing provided so far that tells the Town that Mr. Baehre owns the property. Deputy Town Attorney Steve Bengart suggested tabling the request in order to obtain the proper documentation that shows ownership. He closed on the property about a year and a half ago and it is in his wife Laura's name, he has a deed but he does not believe it is recorded appropriately. Deputy Town Attorney Steve Bengart said without that deed being of record he cannot advise the Board to move forward with this request until it is on record and show Mr. Baehre's ownership of the property. He asked if the Board could approve his request pending the deed be recorded. Deputy Town Attorney Steve Bengart said the Town does not do "pendings". Mr. Baehre clarified that he wants to know if there anything else besides showing ownership that would preclude him from obtaining the requested variance, he wants to proceed with finding an architect to draw up his plans, etc., but he does not want to wait another month to do that. Deputy Town Attorney Steve Bengart said he understands but he cannot give Mr. Baehre that comfort level and he has to advise the Board that they cannot vote on this matter without knowing that Mr. Baehre has the ownership interest. Mr. Baehre said it is not a big deal to get the deed recorded. Mr. Hickey asked if he could do it tomorrow and Mr. Baehre said no. Mr. Hickey asked if he could do it within the next 30 days, Mr. Baehre said yes. Mr. Hickey said he can come back to the Board in 30 days with the recorded deed and give the presentation. Mr. Baehre wants to know if it is out of the realm and what else he needs to submit. Deputy Town Attorney Steve Bengart said the Board is not going to vote this evening but can ask further questions about the project, however Mr. Baehre cannot count that as a comfort level for approval when he comes back before the Board and that does not mean the Board won't have other concerns when the proposal is heard again. Mr. Callahan said the variance was not properly advertised because Mr. Baehre will need a height variance as well. The variance will need to be reposted. Mr. Baehre asked for his request to be tabled.

ACTION:

Motion by Jonathan Hickey, seconded by Patrick Krey, to **table** Appeal No.1.

ON THE QUESTION:

The applicant needs to show proof of the recorded deed showing the transfer of that property per the advice of Deputy Town Attorney Steve Bengart.

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

MOTION CARRIED.

Appeal No. 2

Noel Dill
Commercial

Requests the Board of Appeals approve and grant:

- 1.) A 12.5 square foot variance to allow a 60.5 square foot freestanding plaza sign.
- 2.) An 18.2 square foot variance to allow a 28.2 square foot LED sign.
- 3.) A variance to allow a full color LED sign.

All requests apply to 9560 Main Street.

Appeal No. 2 is in variance to 1.) §181-3(B)(6), 2.) §181-3(B)(4), 3.) §181-2(C) (6). "LED signs to emit single monochromatic color on a black, unlit, background".

DISCUSSION:

Mr. Callahan noted that the applicant for Appeal No. 2 asked to be withdrawn from the agenda, a letter stating the same is on file. The letter indicates they would like it tabled until the April 2019 meeting. The request was properly noticed.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara, to **table** Appeal No. 2.

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

MOTION CARRIED.

Appeal No. 3

James and Patricia Braun
Residential Single Family

Requests the Board of Appeals approve and grant a 7.5' variance to allow a 5' side yard setback for the construction of an attached garage located at 6260 Creekbend Court.

Appeal No. 3 is in variance to §229-52(B).

DISCUSSION:

There are two (2) neighbor notification forms on file. Patricia Braun and Jay Capozzi are present. Mr. Capozzi build the house 20 years ago and will help the applicants through the process. He submitted the front elevation which is on file as Exhibit A, the partial site plan as Exhibit B and the photo of the house as Exhibit C. Mrs. Braun said they have a two-and-a-half-car garage and her husband likes to tinker with old cars and change his own oil, they do not want the vehicles in the driveway. They currently have four (4) cars and are storing two (2). The house next door has a two-car garage.

Mr. Hickey asked if there is a reason why the structure cannot be located closer to what the area is required by code. Mr. Capozzi said they want to be able to get a mower in between and per the deed restrictions there has to be a breezeway connecting the house and the proposed structure. The Braun's have lived there 21 years. There is no estimated cost of the project yet.

Mr. Mills asked if there are plans for the second floor. Mr. Capozzi said there is not a floor plan yet but they are considering a staircase instead of folding stairs. The second floor would be used for storage. The front façade would be brick veneer and the roof would be architectural shingles to match the house. Stone caps above the garage door to be consistent with the house. There will be two (2) dormers on the addition and possibly a cupola. Chairman Michnik asked if adding a cupola changes the variance for height. Mr. Callahan said no.

Mrs. Braun said her husband was very concerned with the neighbors and that they liked what it looked like so he sent them a copy of the plans and they both thought it looked great.

ACTION:

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **approve** Appeal No. 3 as written.

ON THE QUESTION:

Mr. Hickey said it appears that Mr. Capozzi has a long-standing professional and personal relationship with the applicants, he built the home 20 years ago in this beautiful community, everything that is proposed would not have an undesirable change, in fact it would have a desirable change to the property. The applicants have done their homework with respect to the surrounding properties. There was a reasonable explanation as to why there wasn't an entirely feasible alternative method with respect to the setback. Yes this is a self-created difficulty but it is not compelling when you look at the totality of the circumstances. It is not a substantial variance. It is a benefit not only to the Braun's but to the surrounding properties as well.

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

MOTION CARRIED.

Appeal No. 4

Herbert Guenther
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 307 square foot variance to allow for the construction of a 717 square foot attached garage addition, resulting in 1,267 square feet of total attached garage space.
- 2.) A 7.5' variance to allow a 5' side yard setback for the proposed attached garage addition.

All requests apply to 8689 Nottingham Terrace.

Appeal No. 4 is in variance to 1.) §229-55(D), 2.) §229-52(B).

DISCUSSION:

Herbert Guenther is present. Neighbor notification forms have been sent certified to four (4) neighbors. No comments have been received by Mr. Guenther.

Mr. Hickey said he talked to a guy at 8699 Nottingham Terrace who offered no objection.

Mr. Guenther would like to build a 2-car garage at the back of the existing driveway to help with the growth of their family and to provide additional storage. The same construction and materials as the primary residence will be used. He believes it is in keeping with the original house in terms of the look. They are bound by the septic system which was already moved once, he does not want to move it again. If he moved it to the east it becomes hard to use it as a 2-car garage. Currently, his power lines go across the property at 8677 Nottingham and comes to the back of his house. Twice tree limbs have fallen and ripped the lines off his house, so they are going to bury the electrical which will be between the septic system and the proposed garage to get to his house. Since he has lived at this property, which has been since 2002, nothing has been developed on that property, it is at the bottom of the escarpment for 8677 Nottingham. He hopes that it is in keeping with the neighborhood and will bring value to his house and the neighborhood.

Mr. McNamara asked for clarification that the applicant does not need a height variance, Mr. Guenther confirmed that he does not. Although he would like to put a cupola on top of the structure.

Mr. Krey asked why the septic system was previously moved, Mr. Guenther said due to the location of the pool. It was \$10,000 to move the septic system, he would expect the cost to be similar if he had to re-locate it again. There is bedrock on his property so he might have to bring in a jackhammer to dig down deep enough if he had to relocate the system again, but he really doesn't want to have to do that.

Mr. Guenther said the garage will be used for car storage and pool furniture.

Chairman Michnik referred to the comment about moving the electrical line, he asked if there is proof that an approval was obtained to move it. Mr. Guenther said he has a permit from the electric company (NYSEG) that says when he is ready to proceed he should submit that permit, NYSEG is ready to move on it as well. Mr. Guenther had the house built in 2002 and they would like to stay there. Chairman Michnik asked what the cost estimate is for proposal. Mr. Guenther said his best guess is between \$35,000 and \$70,000. He does not know who will be building it at this point.

ACTION:

Motion by Richard McNamara, seconded by Ryan Mills, to **approve** Appeal No. 4 as written.

ON THE QUESTION:

Mr. Mills said the applicant has provided testimony both orally and by way of documentary evidence of the front elevation and the site plan. There is no other alternative location due to the septic tank and the pool, the proposed location makes the most sense. The character of the structure conforms with the neighborhood.

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

MOTION CARRIED.

Mr. Krey voiced his concern regarding Appeal No. 1 from the February 12, 2019 meeting noting that the Board agreed to table the request for one (1) month with the condition that he get everything in order and come back before the Board. Mr. Callahan said the applicant called and is still working with the Building Department, it was not ready for the advertising of this meeting, it will be on next month. There may be an additional variance for the chickens.

Meeting adjourned at 8:07p.m.

Carolyn Delgato
Senior Clerk Typist