

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday March 13, 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  
Richard McNamara                              Jonathan Hickey

Zoning Board of Appeals member absent: Patricia Burkard

Town Officials present:

Director of Community Development James Callahan  
Councilman Paul Shear (arrived at 7:15pm)

Motion by Jonathan Hickey, seconded by Richard McNamara, to **approve** the minutes of the meeting held on February 13, 2018, as written.

Jonathan Hickey      Aye                      Richard McNamara      Aye  
Ryan Mills              Aye                      Daniel Michnik          Recuse

MOTION CARRIED.

Other interested parties present:

Dan Dietrich              Mary Dietrich              Charlie Kelkenberg              Michael Frushone  
Heidi Frushone              Thomas Nicotra              Angelo McDougall

**Old Business**

**Appeal No. 1**(from January 2018)  
Christopher D. Galasso  
Industrial Business Park

Requests the Board of Appeals approve and grant a use variance to allow for the construction of a residential single family home at 9300 Wehrle Drive.

Appeal No. 1 is in variance to §229-100.

**DISCUSSION:**

This agenda item has been tabled until the May 8, 2018 Zoning Board of Appeals meeting at the request of the applicant. Request is on file.

## New Business

### Appeal No. 1

Mary and Dan Dietrich  
Residential Single Family

Requests the Board of Appeals approve and grant a 14' variance to allow a 26' front yard setback for the construction of an addition to an existing single family home at 8655 Sunset Drive.

Appeal No. 1 is in variance to §229-52 (A)(1).

### **DISCUSSION:**

Mary and Dan Dietrich are present. There are two (2) neighbor notification forms on file. Mr. Dietrich said they want to expand the house on the line of site side on the front, not the brick side. It will be 10' of living space out from the vinyl siding and then another 4' for the overhang with a porch. The width would be a portion of the garage, the front of the garage and the remainder of the house.

Mr. Hickey asked for the details on the livable space being proposed. Mr. Dietrich said the 10' x 27' bump-out would house an office and a mudroom. The existing garage is needed for the additional space for a bedroom. The existing livable square footage is approximately 1400 square feet. The bump-out would be approximately 270 square feet. The Dietrich's have lived there 15 years. Mr. Callahan clarified that the setback could be 35', the standard in that area is 45' per the map cover. Mr. Hickey said the variance might be only for 9' then. Mr. Hickey asked what the estimated cost is for the project. Mr. Dietrich said he does not have a cost yet because he wanted to make sure he was able to obtain the variance first. Mr. Hickey asked if the applicant has considered alternatives for accomplishing what the goal is, while not having such a significant issue regarding the setback. Mr. Dietrich said he cannot do anything in the back because he his septic system is back there, he cannot go on either side of his house either. If this does not get approved he will turn the garage into a bedroom and put a shed in the back yard. Mr. Hickey asked if the applicant has lived there longer than his neighbors. The Dietrich's moved in before one neighbor did, and the other neighbor was there before the Dietrich's moved in. Mr. Dietrich explained that his daughter and her six (6) children have recently moved back in with them. They are looking for the variance to accommodate living quarters for his daughter and her children because they will be living with them for years to come. The addition is not to store equipment or to run a business, it is for living space.

Mr. McNamara asked if the applicant considered building up. Mr. Dietrich said yes. He went on to explain that he can't do a second story for the whole area because his living room is a cathedral ceiling. If he built above that he would have to tear the ceiling out and put a flat ceiling in, he really does not want to get into that. So the cathedral part would be in the middle of the second story. Mr. McNamara suggested looking further into a second story, he could get more square footage.

Mr. Mills asked what the front elevation will look like. Mr. Dietrich said it will be vinyl. They want to convert the home from a three (3) bedroom house to a four (4) bedroom house.

Mr. Dietrich said he has never parked a car in his garage. The garage currently hold storage bins from his daughter's move. There are bikes and strollers stored there as well. There will be three (3) vehicles in the household and the driveway can accommodate all three (3).

Mr. Mills asked about the 4' overhang with concrete slab. Mr. Dietrich said they want the overhang so that the vehicles are not pulled up too close to the house and so the adults can sit out there when the children are riding their bikes outside.

**ACTION:**

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **approve** Appeal No. 1 as written.

**ON THE QUESTION:**

Mr. Hickey said although the request is asking for 14', it might be as little as a 9' variance depending on the calculations of the neighborhood and the setbacks as they exist. Even if it is 14' he does not believe that there is an undesirable change in the neighborhood. There don't appear to be any other feasible methods to accomplish what the applicant is looking for. The request doesn't appear to have any adverse physical environmental impacts. The variance does not appear to be substantial. The difficulty is self-created however in light of the compelling and admirable reasons and circumstances surrounding a difficulty it would not be appropriate to hold it against the applicant.

Mr. Mills noted that there was testimony from the applicant that the actual structure will only extend out 10', the additional 4' is going to be an overhang or soffit, this mitigates the amount extended out.

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

MOTION CARRIED.

**Appeal No. 2**

Charles Kelkenberg  
Residential Single Family

Requests the Board of Appeals approve and grant a 200' variance to allow a 300' front yard setback for the construction of a single family home to the east of 9750 Clarence Center Road.

Appeal No. 2 is in variance to §229-52 (A)(1).

**DISCUSSION:**

Michael and Heidi Frushone are present. Mrs. Frushone said they are concerned about there not being a shoulder on the road, which is why they are asking for the setback. They don't know if or when the road will be fixed. Her son is disabled and gets van rides every day for programs he is involved in, they want the van to be able to pull in and out safely. It is a large lot and the house will be a fairly good size.

There are two (2) neighbor notification forms on file.

Mr. Kelkenberg said he is concerned with drainage around it. Immediately to the front of where the 300' is there is a swale that runs to the road. He likes to utilize a natural drainage as much as possible, so he would want to maintain the swale. The driveway would come in along the tree line on the east side. He would put a pipe under the driveway to make sure no existing drainage is blocked. The neighbor's house to the east is 90' off the road. If a house were built closer it would be in the neighbor's backyard. The neighbor would have more privacy the further away the proposed house is built from the neighbor's house.

Mrs. Frushone said she would rather not be in front of the church.

Mr. Kelkenberg said early on he had discussions with the church about selling the entire property, he told them they should obtain setback variances needed for all the property splits at the same time. However, the church is not sure they want to sell all the property right away. He noted that the Town is interested in some of the property for a connection to the bike path.

Mr. McNamara asked if 300' is enough to get past the swale. Mr. Kelkenberg said the front corner of the garage would touch the 300', the rest of the house steps back. Mr. Kelkenberg said he could use another 50'. The property is higher in the back which is conducive to drainage. Another 30' would make it easier to grade into that swale. All utilities are underground, the house is approximately 3100 square feet with a 3-car side load garage. The garage would face east.

Mr. Mills asked for details on the house. It is a single story with a covered porch in the back and possibly a pool in the future. Mr. Mills then asked for details on the driveway. Mrs. Frushone said it would come up the property and turn around in front of the house then join again with the driveway to exit. She wants to accommodate the vans that pick up her child, the vans come from organizations such as People Inc. and Independent Living. They have not closed on the property yet, they have a contract for sale that has been executed with a contingency related to the setback. Mr. Mills asked if the applicant would still purchase the property if the variance is denied. Mrs. Frushone said probably not.

Mr. Hickey asked how long the neighbor, Mr. Cooper, has lived at his address. The Frushone's do not know. The Frushone's currently live on Old Post Circle. Mr. Hickey asked who will reside in the proposed home and how long they intend to stay there. Mrs. Frushone said her, her husband and their son will live in the home for as long as they can.

Chairman Michnik asked what the applicant is looking for as far as increasing the variance request. Mr. Kelkenberg said if it was increased by 30' it would make it better for him. Chairman Michnik suggested the variance be increased by 50' and if only 30' were used it would be acceptable. Mr. Kelkenberg agreed. The Frushone's would like to build as soon as they can, within 60 days. They signed the contract about a month ago, Mr. Mills said they are probably a few weeks away from closing.

Mr. Mills referred to Exhibit A and asked for details on the swale. Mr. Kelkenberg said the darker area is the area of the swale. Mr. Mills said it would be prudent to set the house back to avoid the swale area. Mr. Kelkenberg submitted elevations and floor plans, they are labelled Exhibits B through F and are on file. It will be a side-load garage, materials used on the front will be a mixture of stone and vinyl siding.

#### **ACTION:**

Motion by Ryan Mills, seconded by Jonathan Hickey, to **approve** Appeal No. 2 as written and modify the request to allow for a 250' variance to allow a 350' front yard setback.

#### **ON THE QUESTION:**

There is testimony and evidence that the applicant needs some additional turn around space for vans that pick up and drop off their son. Exhibit A depicts the natural features of the land which includes a large swale that cuts through the parcel and in order to accommodate the structure and respect the swale it seems that the initial requested setback, and beyond, is appropriate. The church is approximately the same distance

back. The house at 9860 is set forward and seems like that structure has been there for quite some time, the scale of this house is different and is protected by some foliage. For these reasons this setback request is different than other setback requests that have been in front of the Board.

Mr. Kelkenberg said an additional 50' will give him a cushion.

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

MOTION CARRIED.

### **Appeal No. 3**

Angela McDougall and Thomas Nicotra  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 6.5' variance to allow a 3.5' side yard setback for the construction of an addition to the existing residence at 8790 Main Street.

Appeal No. 3 is in variance to §229-63(A).

### **DISCUSSION:**

There are two (2) neighbor notification forms on file.

Mr. Nicotra said they are looking to build an attached garage 25' x 24' a bit more forward than the existing garage. It will be a one-story garage. The applicant submits Exhibits A, B and C which show the site plan and the elevations of the proposed structure.

Mr. Mills asked for confirmation that there will be nothing on the second floor, it will just be a garage structure. The stone and vinyl siding will be tied in to match the existing house. Mr. Mills asked if the applicant explored other ways to achieve the desired outcome. Ms. McDougall said yes but none were feasible. A detached garage would not work, they have five (5) people living in the house and they need a mudroom and a 2-car garage. Any smaller and that would defeat the purpose because they have the bump-out through the entrance way.

The applicants have lived in the house since 2002. They have three (3) children who are all driving age, so there are five (5) cars at the property. One neighbor has been there since the applicant's bought their property. Ms. McDougall talked with that neighbor, Elaine Grogan, who was in total agreement. But Ms. Grogan was confused and thought the proposed structure was going to be located on her property, she went to the Planning Office to discuss the request with Jonathan Bleuer. The applicants stated that, as far as they know, Ms. Grogan now understands where the proposed structure will be placed, which is not on her (Ms. Grogan's) property, she was also made aware that the garage will be one (1) floor. Mr. Nicotra said the garage will be used for storage of lawn equipment and parking, for personal use only. By attaching the garage it is putting the structure further away than the existing garage is from Ms. Grogan's property line. This is the furthest away from the property line they can go and still achieve the desired outcome. The estimated cost of the project is \$30,000.

Mr. Nicotra will do the construction of the proposed structure and will start as soon as they receive approval. Chairman Michnik asked about the stakes on the property, Ms. McDougall said the neighbor had her

property re-surveyed. It is further explained that the variance request has changed due to the downsizing of the garage. The request is now for a 5.9' variance to allow a 4.1' side yard setback.

**ACTION:**

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 3 with the adjustment to the request stating the variance being approved is for a 5.9' variance to allow a 4.1' side yard setback.

**ON THE QUESTION:**

Mr. Hickey said with reference to the request there is not an undesirable change to the nature of the community. It does not seem that there are feasible cost effective alternatives to accomplish what the applicants need. Due to the facts and circumstances of the location of the property, it is not a substantial request. The plans submitted show an improvement to the property and will not have an environmental impact on the area. The space issue may be self-created however that component does not outweigh the other elements of this request. The applicant is updating and improving the property while safely taking care of their family.

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

MOTION CARRIED.

Mr. Mills said with respect to Appeal No. 1 under Old Business, the Stangs need to be notified of the time and date of the next meeting, they are the neighbors across the street from the subject parcel.

Meeting adjourned at 7:55pm

Carolyn Delgato  
Senior Clerk Typist