

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday March 14, 2017
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
David D'Amato	Richard McNamara
Jonathan Hickey	

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

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:00 p.m. The session ended at 7:10 p.m. and the Zoning Board of Appeals meeting opened.

Motion by David D'Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on February 14, 2017, as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Recuse
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Joe Roaldi	Otto Misso	Priscilla Kieber	Michael Hora
Christopher Bopst	Martin Sadkin	Tyler Palmer	Michael Braddell
Dennis Steszewski	Geffrey Gismondi	Michael Barry	Larry LaDuca
John Fischer			

Old Business

Appeal No. 1 (from Feb 2017 Meeting)

Nativity of Mary School/Misso, Otto
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow an LED sign within the Traditional Neighborhood District located at 8550 Main Street.

Appeal No. 1 is in variance to §181-3(D)(5).

DISCUSSION:

Otto Misso, facility manager, and Joe Roaldi, school principal, are present. Mr. Misso talked with a few contractors and a representative from the sign company who estimated the cost would be about \$6,000 by the time they ripped the old posts out, put a foundation in and did the brick work. The representative from the sign company said if the applicant is looking for a “brick look” without the expense, he could install aluminum with a brick print on it.

Mr. Roaldi said the sign is 50 years old and is outdated. They are trying to update the façade of the school so that it is more visible to the public in hopes of bringing more people into the school. They do not want to be a distraction to drivers. The sign would indicate ongoing events at the school and the church.

Mr. Hickey asked what has changed with the sign since the last meeting. The only change is the size in LED sign which is 2’ by 5’, there are filler panels on the side but they will not be illuminated. Mr. Hickey asked about the color of the light. Mr. Misso said they chose a blue background with yellow letters. The composition of the fake brick material is aluminum siding.

Mr. Mills asked for clarification that the aluminum siding will have a brick print on it and that there will be no dimension to it. Mr. Misso said that is correct. Mr. Mills asked if the applicant looked at using a quarter brick face or brick veneer. Mr. Misso does not know how that would hold up being outside. Mr. D’Amato said it is very durable. Mr. Misso said he could look into it. He clarified that the cost differential between the aluminum and the brick is \$6,000. That cost is over and above the cost of the LED sign, which is about \$22,000-\$23,000.

Chairman Michnik said if the applicant used veneer brick they might not have to change the foundation. Mr. Misso agreed.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 1 under Old Business with the condition that the applicant utilize veneer brick, which is an actual brick approximately a quarter or three-eighths inch thick on all sides of the columns, the north and south sides of the columns.

ON THE QUESTION:

Jonathan Hickey	Aye	Richard McNamara	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3 (from Feb 2017 Meeting)

Judith Sadkin
Agricultural Floodzone

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow a 471.5' setback for the construction of a single family home.
- 2.) A variance to allow for the construction of a detached accessory structure located within the front yard setback.

Both requests relate to 8100 Lapp Road.

Appeal No. 3 is in variance to §229-31(A)(1) and §229-34(E).

DISCUSSION:

Christopher Bopst, represents Judith Sadkin with regards to the sale of the real estate to Mr. Hora. He was asked to provide a letter to his attorney, which he did, that basically stated that he understands that on behalf of Mrs. Sadkin Mr. Hora is representing this petition. Mr. Hora has knowledge as to why the variance is being sought, Mrs. Sadkin does not have knowledge as to why the variance is being sought, so they will refer to Mr. Hora in that regard. Marty Sadkin, Mrs. Sadkin's son is present. They have nothing to add as to why the variance is being requested. Deputy Town Attorney Steve Bengart asked if there is something indicating that Mrs. Sadkin is authorizing someone to speak beyond those representing her at the meeting. Mr. Bopst has been representing Mrs. Sadkin on the real estate side for quite some time. He has been authorized by Mrs. Sadkin to represent her in saying that she has no knowledge of the reason for the variance.

Mr. Hora said originally the house was setback at 497' because his architect misunderstood the Town Engineer. Because of the misunderstanding she (the architect) had the house sitting 12' above the existing grade because of the flood elevations. She was 100% wrong. Mr. Hora met with the engineer and learned that the house has to only go 6' above the ground, not 12'. Currently the base flood elevation is 585.4', he can be 4'-5' below that, so his basement can be at 580', the top of foundation walls would be at 589'. Mr. Hora submitted a photo of a house located at 7440 Kenfield with the same setback that he is requesting, which is 300'. The barn does not have to sit on the side of the house, he is good with putting it behind the house.

Mr. D'Amato noted that the setback in that area is 200', he asked if the applicant could live with 200'. The house would sit higher than any other house in that area because it has to be up 6'. Mr. D'Amato said there are three houses in the area that were recently constructed and are pretty high. Mr. Hora said those houses are down by the Millers property and the elevation does go up in that area, his property sits down low. Mr. D'Amato said all other houses in the area are setback 200' or less. Mr. Hora said all that property on the right hand side of the road going down Lapp heading east is higher, except for the farmland on the corner. Everything drops down on the left hand side of the road. The elevation of the road is 584'. To bring all that fill in to build up the house would be too close to the street. Mr. D'Amato said Mr. Hora is setting a precedent, he has an alternative, which is keeping it at 200'. Mr. Hora has young children who may decide to build homes on the property in the future. He has no intention of subdividing or building any other houses except his children's.

Mr. Mills asked for clarification that if two (2) other houses were built on the property it would be for family members only. Mr. Hora confirmed that is correct. Mr. Callahan confirmed that the property has been approved for four (4) additional lots. Mr. Mills asked if the variance was denied would Mr. Hora not move

forward with the purchase of the property. He said he would have to see what to do if it got to that point. Mr. Hora said will probably sprinkler the house.

Mr. McNamara asked if the reason for the extra 100' is so the house looks nice. Mr. Hora said yes, so he doesn't have a house sitting on a hill, it will be a gradual increase.

Mr. Hickey thanked Mr. Hora for the good faith compromise that he has put forth. The variance request has been reduced from 271' to 100' since the February 2017 meeting and the second part of the variance request has been withdrawn altogether. Mr. Hickey asked Mr. Hora to speak to the impact on the property, such as trees or brush that would have to come down, if the setback is at 200' versus 300'. Mr. Hora said if he went 200' a 10" and an 8" Oak tree would have to come down. If the house is at 300' only brush would have to be cleared. In that regards, there is less impact on the environment with the house back 300'. Mr. Hora said he probably chose the proposed location so he would be as far away from Transit Road as possible.

Chairman Michnik asked if the variance was denied would the applicant build at 200'. Mr. Hora said he would have to go there to see what the house would look like at 200'. The house will be a ranch approximately 48' x 50'. Chairman Michnik is concerned about setting a precedent. Deputy Town Attorney Steve Bengart clarified that, if this is granted, just because this house will be set back doesn't mean any other proposed houses on the lot could be set back in similar fashion. They would have to come back before the Board. Mr. Hora understands this. Chairman Michnik thinks 200' gives the applicant ample room for what he wants to do.

It is unclear as to whether there are Federal Wetlands adjacent to the applicant's lot.

Mr. Hora lives at Coventry Green with his offices in Amherst. He is a general contractor and will build the home himself. Mr. Hickey asked, if this variance was approved, when the applicant would start construction. Mr. Hora said he has the fill now and is ready to start.

Mr. McNamara said the applicant could go for an Open Development if he wanted to. Mr. Callahan said there is State Wetlands to the east of the lot that may preclude development.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara, to **approve** Appeal No. 3 under Old Business as amended:

- Request #2 has been removed. The applicant has conceded that the placement of the accessory structure will be in compliance with the Code.
- The setback has been amended to 300', which is a 100' variance.

ON THE QUESTION:

Mr. Hickey noted that Mr. Hora has come in good faith with a significant compromise as opposed to his first request. The proposed setback and proposed dwelling are not undesirable to this specific property. It is not clear if there are feasible alternate methods. If there is a feasible alternate method at 200' it might impact the environment greater than the 300' setback. In this specific set of facts and circumstances Mr. Hickey does not find this a substantial variance.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Nay	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Appeal No. 1 (from Sept 2016 Meeting)

John Braddell/Lakeside Sod
Industrial Business Park

Requests the Board of Appeals approve and grant a 93' 8" variance to allow for a 153' 8" tall wind turbine located at 6660 Goodrich Road.

Appeal No. 1 is in variance to §173-4(C).

DISCUSSION:

Michael Braddell of Lakeside Sod is present along with Tyler Palmer of United Wind. Mr. Palmer said they looked at the other side (the north side) of the pond and compared the cost. The cost differential was provided to the Board members and is on file. The other side of the pond is actually owned by a different entity, so this option is not viable. Per the Board's suggestion another location that they looked at is just south of the pond and behind the barn, there is a bump there so they can't place the turbine there. It is clarified that the land to the north is a subsidiary of Lakeside Sod and is owned by Mr. Braddell's father and uncle. Mr. Braddell said he is not putting up the turbine for show, it is for cost savings to make the farm more viable, it will lower the utility costs so they can continue operations.

Mr. McNamara said if they move it to the north, he thinks they have a good chance of being granted the variance, but if they keep it where it is currently proposed, they are affecting the neighbors. It would be worth it to spend \$3100 (which is the cost differential indicated on the submitted analysis) and keep the neighbors happy. Mr. Braddell said it is only 50' from one side to the next. If he were to move the turbine to the other side of the pond he would be taking part of his father's and uncle's nest egg. Mr. McNamara clarified that it is 220' from the proposed location to the other side of the pond. There is less disturbance to the trees there and if it's close to the edge of the property it won't be taking a huge chunk of usable land away. Mr. McNamara thinks the right thing to do is to move it north.

Mr. D'Amato voiced his concern with the integrity and the new inexperienced representatives of the United Wind Company. Every turbine that Mr. D'Amato is aware of, in which United Wind has put up, has had an issue.

Mr. Mills noted Exhibit A, which is a document entitled Opposition to the Petition for a Variance, received by the Town on March 13, 2017 from the Law firm of Hogan Willig, Attorney Jeffrey J. Tyrpak, submitted on behalf of Dennis and Lisa Steszewski.

Mr. Mills asked if the applicant could offer some type of alternative location farther away from the neighbors. The applicant said the only other place it could go is west of that and he thinks that would be worse. Mr. Braddell marks Exhibit B to show an alternate location for the turbine. However he goes on to explain that the current proposed location is shielded by foliage. Mr. Mills asked if the applicant could talk with his father and his uncle to get them to agree to place the turbine on their parcel. Mr. Braddell does not think they will agree. Mr. Palmer noted that the foundation of the turbine is 22' x 22'.

Chairman Michnik asked how thick the tree line is that runs along the property line. Mr. Braddell said in certain locations it is 20' wide, most locations are 10'+.

It is clarified that the proposed location is on property owned by Lakeside Sod Company Inc.

Dennis Steszewski, of 9430 Pine Meadow Drive said he built his home abutting a commercial property, he knows what is allowed on a commercial piece of property and he is ok with that. He does not think it is fair that someone is going to put a 200' wind mill up. He has two (2) young kids that would have to listen to the windmill all the time. The value of his property will decrease. There are other things Lakeside Sod can do to offset the cost of operations, such as solar power. It is a quality of life issue for Mr. Steszewski.

Michael Barry, of 9440 Pine Meadow Drive, reviewed minutes from previous meetings. He asked the Board why they are discussing this case when the Board asked the applicant to re-locate the tower and the applicant said he does not want to do that. Deputy Town Attorney Steve Bengart reminded Mr. Barry that this meeting is to gather information on the variance request, it is not a question and answer opportunity between the resident and the Board. Mr. Barry asked why the agenda says the applicant must be present, he is not.

Geffrey Gismondi, a lawyer from Hogan Willig, said the applicant is not present, and noted that Michael Braddell is present on behalf of Lakeside but he does not seem to have the knowledge to answer the Board's questions, he does not have ownership documentation nor is there documentation for anything Mr. Braddell has presented. Mr. Gismondi said Mr. Braddell said there isn't enough room to move the tower but there is no documentation of that. The adjacent property might be owned by another entity but he is not sure and he has no documentation of that. He said he has exhausted all the options but Mr. Gismondi does not see any documentation showing the applicant has exhausted a single option. 150' cell phone towers are not uncommon but that is not what is being discussed. The issue as Mr. Gismondi understands it is the height, not the location. The request for a height variance is substantial and is a purely private benefit to one business/family who are aware of their holdings and profits and assets because they don't want the turbine on their personal property (the uncle and father's property) but it's ok to have it next to the swimming pool with the 5 and 7 year old who will be there on weeknights, weekends and holidays. The business closes down on weeknights, weekends and holidays. His client has been there 17 years, Mr. Gismondi said he does not see the benefit of this request to anyone except to the business, there are only negatives. This will affect sellers and buyers of nearby properties. The wind turbine is an eye sore and creates noise pollution. Last week there were 60 mile an hour wind gusts, Superstorm Sandy hit in the past few years and there is lightning in the area. These things come down, they light on fire, the turbine arm can fall off and hit somebody. If approved by the Town it will still lead to nuisance litigation. Mr. Gismondi said due to the weather and not many people being in attendance at this meeting he asked the Board to hold open a comment period in writing for people to submit comments, maybe for a week. If approved this will set a precedent. He is concerned with the strobing shadow the turbine will create. He referred to minutes from a 2014 meeting where a similar variance was denied by the Board, "The height of the wind mill will create an undesirable change in this residential single family area providing a detriment to nearby properties based upon aesthetics, noise, potential migration amongst animals and issues with the water table." This is the same for this request. He went on, "There are other feasible methods to obtain the same results, same as in this case, possibly solar, possibly smaller windmill height and/or different energy resources. Based upon the testimony and the requested variance, an excess of 80' would be deemed substantial." This variance is 94'.

Chairman Michnik asked what proof Mr. Gismondi has that the home value will change. Mr. Gismondi does not have an appraisal of what the home would be valued at if the turbine was built. Chairman Michnik asked if Mr. Gismondi has proof of the shadows that would be created, Mr. Gismondi said yes but it is not part of package he submitted, it is a phenomenon that happens. Chairman Michnik said there is no proof that a whole group of people were coming to the meeting and weather held them back, Mr. Gismondi does not have a list of names and addresses of those who may have attended. Chairman Michnik when on to say that the statements that Mr. Gismondi are valid, but only with proof. Mr. Gismondi asked for a week to submit the information that will validate his statements. His request will be taken into consideration.

Mr. Braddell said they looked into solar energy and the cost is three (3) to four (4) times more than a windmill and the footprint is an acre and a half of property.

Mr. D'Amato asked what the permitted uses are for the Industrial Business Zone, as this is the zoning of the property in question. He asked if a factory could be built on the property and operate 24/7. Mr. Callahan said yes, per the code a manufacturing facility it a permitted use.

Deputy Town Attorney Steve Bengart commented on the minutes of the other matter that was presented saying that the ruling was against the company, however it went to court and the Town lost. One of the proponents was the NYS Agriculture and Markets who came in and took the Town to task. The height of that tower will be 153'.

Mr. Mills asked if, because this is zoned industrial, NYS Ag and Markets would do the same thing. Deputy Town Attorney Steve Bengart said he can't say what the State will do, however it is in an Agricultural District. This is potentially a similar situation.

Mr. Gismondi asked if opponents to this variance would have the right to litigate Article 78 proceedings. Deputy Town Attorney said yes.

Chairman Michnik asked for proof of who owns which properties with reference to the variance request. He also asked for representation for Mr. Braddell's father's and uncle's property, perhaps a letter from them stating they permit Mr. Braddell to represent them. Deputy Town Attorney asked if Mr. Braddell is a member of the LLC or the corporation. Mr. Braddell said yes he is part owner. Deputy Town Attorney Steve Bengart thinks he has every right to represent his father and uncle. It is clarified that Mr. Braddell cannot speak to the adjacent properties, if the Board wants someone to talk about that property Mr. Braddell will have his father come to a meeting. Mr. Braddell is ok with moving the proposal forward.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** Appeal No. 1 (from Sept 2016 Meeting) under Old Business, with the condition that it be located to the north of the property on the other side of the pond. The approximate location is shown in Exhibit B, which indicates not less than 75' off the northwest side of the pond.

ON THE QUESTION:

Mr. Hickey said most of the opposition submitted takes into account a variety of distances that factor on variables taken into account which include, but are not limited to, noise and shadows, albeit absent direct

proof. Contemplating moving it would impact in some way, shape or form that he has difficulty grasping one way or the other.

Jonathan Hickey	Nay	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

New Business

Appeal No. 1

Larry LaDuca
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow up to a 350' front yard setback for the construction of a residential single family home at SBL#57.07-1-8 on Newhouse Road.

Appeal No. 1 is in variance to §229-52(A)(3) estimated as-of-right setback = 95'.

DISCUSSION:

Larry LaDuca, of Natale Builders, is present and explained the client is Samantha Palmerton who has a contract for the land contingent on doing this project.

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

Chairman Michnik asked if there is any documentation that gives Mr. LaDuca authority to represent Ms. Palmerton. Mr. LaDuca said yes, she signed something. Chairman Michnik said he does not see anything in the file stating Mr. LaDuca is representing Ms. Palmerton. Deputy Town Attorney clarified that there must be documentation authorizing Mr. LaDuca to speak on Ms. Palmerton's behalf.

John Fisher, of 5835 Newhouse Road, voiced his concern noting there is no real site map. He does not have a problem if the house will be located as shown on the "Google Maps" document on file. He has issues with an open-ended setback measurement, he might not agree with house placement "somewhere" in that envelope.

Mr. Hickey clarified that the variance request would be for 255'. He asked the applicant why the proposed location. Mr. LaDuca said his client wants her privacy, the barn on the adjacent property has no windows on the side where the house would be located. The client may get a horse and this would provide room for her to run the horse. The proposed home is 3500 square feet. Mr. Hickey asked what type of environmental impact this home will have. Mr. LaDuca said they would put a berm in to protect her privacy and that of the neighbors. There are some existing natural trees that would remain. Mr. Hickey asked if it is easier to place the home at 350' rather than 95'. Mr. LaDuca said his client could buy property anywhere at the 95' setback, the purpose of the 11 acres is for seclusion and privacy. She will not go through with the deal if the house has to be built at 95'. It is not easier to put it back 350', more trenches will have to be dug, more electrical and so on.

Mr. D'Amato asked if Ms. Palmerton is aware that there is a pre-existing 95' setback in the area. Mr. LaDuca said yes, he explained it to her. Mr. D'Amato asked if she is willing to compromise. Mr. LaDuca said she does not want any neighbors.

Mr. Mills asked if Mr. LaDuca can represent to the record that if the variance is granted the house would be located on the property somewhere between 300' to 350'. Mr. LaDuca said yes, she is sending her signature now. Mr. Mills asked if Mr. LaDuca can also represent acceptance of it being contingent on a berm on the north and south property lines. Mr. LaDuca said yes, Ms. Palmerton would do that anyway. Mr. LaDuca submitted an electronic letter with a signature from Ms. Palmerton giving him the authority to represent her. Deputy Town Attorney Steve Bengart said he cannot accept an electronic letter. Mr. Mills asked for details on the house. Mr. LaDuca said there will not be a walk-out basement, it will be a two-story home and have a three-car garage. He has no renderings of the house but he does not think it will be a cottage-style home.

Deputy Town Attorney Steve Bengart asked if the applicant could provide numbers or something more definitive, if he needs to come back to the Board, as to where the house is intended to go. Mr. LaDuca said he had a stake on the property. Mr. D'Amato said there were stakes on the property but the house was not staked. Mr. LaDuca was advised to stake the four (4) corners of the house and put flags on the stakes.

Mr. McNamara asked if the property will be subdivided in the future. Mr. LaDuca said no. Deputy Town Attorney Steve Bengart said if it is acceptable that no subdivision of property is a contingency of the approval. Mr. LaDuca said yes.

Chairman Michnik said sight lines have already been set on Newhouse Road, he thinks this is being dropped in and throws off the whole flow of that street. He is not big on approving almost 300' variances. Mr. LaDuca said the footprint on the house is not much larger than the barn. Chairman Michnik said a barn is different from a home. He is looking more at a setback between 95' and 200'. He asked the applicant to stake the property at 200' as well. Mr. LaDuca said there are stakes every 200' on the property. Chairman Michnik asked the applicant to put four (4) stakes at the 200' setback. Mr. LaDuca said that would be a waste of everyone's time because she does not want it at 200'. Chairman Michnik said it would give the neighbors a visual, just in case the Board goes that way.

Deputy Town Attorney Steve Bengart said he needs to see a contract stating that the sale is contingent upon this approval or a letter from Steinwachs saying that he is aware and approves of what is going on.

ACTION:

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **table** Appeal No. 1 under New Business. The applicant is to provide the following per the previous discussion:

- A letter from Steinwachs or contract subject to Zoning Board of Appeals approval.
- A letter from Samantha Palmerton authorizing a representative, or she can be present at the next meeting.
- Stake the house showing four (4) corners at the desired location.
- Stake the house showing four (4) corners at 200'.
- Try again to contact the neighbor to the south.

Jonathan Hickey Aye
David D'Amato Aye
Daniel Michnik Aye

Richard McNamara Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting Adjourned at 8:58 p.m.

Carolyn Delgato
Senior Clerk Typist