

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday April 11, 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 David D’Amato
Richard McNamara Jonathan Hickey

Zoning Board of Appeals members absent: Ryan Mills, Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
Town Attorney Lawrence Meckler
Councilman Paul Shear

Motion by David D’Amato, seconded by Rich McNamara, to **approve** the minutes of the meeting held on March 14, 2017, as written.

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

MOTION CARRIED.

Other interested parties present:

James E. Joyce Robert O’Connell Elizabeth Wolczak Jo Rogan
Linda Jenkin Vernon Siegel Paul Donnelly Samantha Bonano
John Fisher Tim Faulhaber Nick Violante James Boy
Jim Bielmeier

Old Business

Appeal No. 4 (from February 2017 Meeting)

James Joyce
Residential Single Family

Requests the Board of Appeals approve and grant a variance of .12 acres to allow for the creation of a .88 acre unsewered lot, split form 5175 Brookfield Lane.

Appeal No. 1 is in variance to §229-49(A).

DISCUSSION:

Chairman Michnik noted that there is a three (3) minute time limit for each person for public participation. He also noted that a letter was received on April 3, 2017 from Mrs. Annette Youngs. The letter is on file.

Mr. Joyce is present along with attorney Bob O'Connell who has been retained by Mr. Joyce and his sister to represent them in this matter. Mr. O'Connell has reviewed the minutes of the previous meetings, reviewed the Zoning Ordinances and looked at the property. He said that under Town Law §267-b there are certain factors that the Board is required to consider in determining whether or not to grant an area variance. The first factor is whether granting the variance will have an undesirable change to the character of the neighborhood or a detriment to nearby properties. Mr. O'Connell's conclusion is no, there are twenty (20) lots on the street, seven (7) are smaller than the proposed split, in fact two (2) houses down is a lot with 117' of frontage. There were various objections made at the previous meeting regarding septic and drainage, it is the Erie County Health Department's prerogative to determine whether or not septic systems are appropriate. Also, if any residence is built on the split lot, if granted, the Building Department will be concerned with drainage issues, not this Board. If the variance is granted it in no way changes the character of the neighborhood. Mr. O'Connell cautioned the Board that the wishes of the neighbors are not a consideration to be made in this determination, they have to make their determination based on the Town Law. The second factor is if the benefit sought by the applicant can be achieved by some other method rather than granting this variance, Mr. O'Connell said the answer is no. There was some discussion as to whether or not Mr. Joyce would agree to split the lot 150'/150' but he has been advised that variances would be required and the chance of getting those variances are practically nil. Mr. O'Connell went on to say the next factor is that the variance request is substantial, the request is for 1.2 acres which is minimal. The next factor is will the granting of the variance have an adverse effect on the physical or environmental conditions on the neighborhood. Mr. O'Connell said there has been no discussion on any of those issues. The next factor is if the variance is self-created and the answer is no. Mr. O'Connell's conclusion is that the variance should be granted. He asked that the Board take an up or no vote so that Mr. Joyce and his sister can determine what action to take in the future, this issue has been dragging on too long. Mr. Joyce has done everything he has been asked to do. Some of the requests of the Board are financially inappropriate or the applicant is unable to comply with. Mr. O'Connell asked the Board to grant the variance request.

Mr. Hickey said there is no new factual information provided at this meeting, he read all previous meeting minutes regarding this request and has no further questions.

Mr. Joyce said the Board asked him to provide an estimated cost involved in moving the driveway, he had a local builder, Charlie Kelkenberg, give him an estimate which he submitted as Exhibit A. He noted that changing the driveway would eliminate access to the third garage.

Chairman Michnik referred to the size of the lot and noted that there was discussion noting that there are different sized lots on the street. He went on to say that the street is one of the original type streets in Clarence and when those houses were built the sections of lot size were different than what they are today, so using that as a fact that 25 or 30 years ago you could build on a smaller or larger lot does not have any effect on what is being discussed today. Today we need to get to 150', and the Board has given Mr. Joyce suggestions on how to reach the 150'.

Mr. O'Connell asked if the Zoning Law is 125' why does this Board say they need 145'. Chairman Michnik said there is not enough room for a house to be built on, it is not a buildable lot at 125' due to the depth of the lot, it is not an acre in size. This is what the variance request is for. Mr. Joyce said even at 150' he would not have an acre.

Town Attorney Lawrence Meckler asked why 145' does not work for the applicant. Mr. Joyce said this is the first he is hearing of it. It is clarified that the Board had not discussed 145' in previous meetings, 150' was mentioned but the 145' is new. Chairman Michnik mentioned 145' because that shows a give and take.

Mr. Joyce said he could go 150' in the front, come around the driveway and the come straight back. Mr. Callahan said that is possible but it adds confusion for the future because of the jagged property lines.

Mr. McNamara asked for clarification on how far away existing corner house line is, with the 135' measurement. Mr. Joyce said from the end of the garage to the wall is 45'. Mr. McNamara noted that only 35' is needed for a turn-around for a side-load garage.

Mr. D'Amato said that \$3800 seems to be a good investment especially since Mr. Joyce is looking to split the lot and sell both lots.

Mr. McNamara asked if the applicant has a price on moving the septic system. Mr. Joyce guessed at \$15,000.

Linda Jenkin lives across the street. Annette Youngs could not be in attendance at this meeting so she asked Ms. Jenkin to read the letter she wrote. A copy of the letter is on file. Mr. Joyce said this is private property, his family's property, it is not a park, it is not set aside and provided for the neighborhood.

Vernon Siegel, of 5120 Brookfield Lane, owns the 300' lot across the street. When he bought his lot his attorney told him it was part of an original subdivision and had been filed. He does not know where it has been filed, he has a lawyer looking into that. From what he recalls there was a restriction if someone wanted to divide a lot, they had to get approval from all others in the subdivision, he remembers he had to sign-off on two of them where they were divided into 150' lots. He would hate to see the lots be narrower than that. He hates to lose the character of Clarence, he sees all the patio homes and construction going on and said Clarence is losing its identity.

Chairman Michnik asked Town Attorney Lawrence Meckler if the information that Mr. Siegel is referring to would be required to make move forward on the request. Town Attorney Lawrence Meckler said no, the decision is up to the Board's discretion.

Chairman Michnik asked what size house Mr. Joyce plans to build. Mr. Joyce does not know yet. Chairman Michnik said what if the size of the house was limited, for example if the house is 2400 square foot it would be the biggest house that could be built on that lot. Mr. Joyce said it will be a four (4) bedroom house. Mr. Joyce would be comfortable with 3,000 square feet, Mr. Siegel's house is 3,000 square feet. It is clarified that Mr. Siegel's house is on a lot with 300' of frontage. Chairman Michnik thinks that a 3,000 square foot house is too big for the proposed lot.

Paul Donnelly, of 5220 Brookfield, has no objection to this proposal. It might be a benefit to the surrounding property values.

Jo Rogan lives across the street at 5180 Brookfield Lane and said she was offended when Mr. O'Connell said the Board should only consider the law and not the neighbors. She thinks the neighbors are just as important if not more important than the law. When that home was built the owner told her they built it on the higher level and planted 50 seedlings they she got from the Conservation Department. She submitted a photo of the trees that she looks at and said they are going to rip out all those trees and said there is no way that is not going to change the character of the neighborhood. Her house is 2,100 square feet in size. The house that is on that lot is only 1,000 square feet, the one that is on the other side of that lot is less than 2,000 square feet. So putting something at 3,000 between two (2) small homes is going to look ridiculous.

Most of the people in the neighborhood are on limited incomes and are not looking to increase their assessments at this time.

Mr. Joyce said he is ok with limiting the frontage. It is clarified that the square footage and frontage will both be taken into consideration.

Mr. Callahan noted that the side yard setback in the Residential Single Family Zone is 12.5' and 15' in the Agricultural Zone.

Mr. Joyce asked if the square footage can be limited to 2,600 square feet.

ACTION:

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **approve** Appeal No. 4 under Old Business, as written with the following conditions:

- the side setbacks are increased from the statutory 12.5' to 15' on each side.
- any single family residence that is built there shall be no greater than 2,600 square feet.

ON THE QUESTION:

Mr. Hickey said he read the minutes from previous meetings, there is nothing new factually presented. He takes into account what the long term neighbors have said. From his standpoint he does not find the suggested variance to be undesirable. Mr. Joyce has agreed to place conditions on any future construction thereby handling the alternate method issue. Mr. Hickey does not find a .12 variance to be substantial. Based on the information the Board has seen the physical environmental impacts are minimal, if at all. With respect to the creation of the difficulty, there has been no affirmative act that said Mr. Joyce is aware of the size of the property. When comparing the benefit to Mr. Joyce with the detriment to health, safety and welfare of the surrounding community, Mr. Hickey feels the variance request is appropriate.

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

MOTION FAILED.

Mr. McNamara and Mr. D'Amato said if the frontage was at 145' they would both change their votes, keeping the other conditions as well.

ACTION:

Motion by Jonathan Hickey, seconded Daniel Michnik, to **amend** the above stated motion with the addition of a third condition:

- at minimum, a 145' frontage distance, with variance of .12 acres at its greatest.

ON THE QUESTION:

Mr. Callahan clarified that the variance will be less than .12 because of the 145' frontage condition.

Town Attorney Lawrence Meckler advised that with the 145' of frontage the variance is now .094.

Mr. Siegel said this neighborhood was part of a subdivision and there were rules so at the time when property was divided in the neighborhood he had to sign off on it, he thinks this still applies to this request. Town Attorney Lawrence Meckler explained that the Zoning Board of Appeals would still be in a position where they could approve a variance under the conditions they stated.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Daniel Michnik	Aye

MOTION CARRIED.

Appeal No. 1 (from March 2017 Meeting)

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:

Samantha Bonano is present and explained that eventually she would like to put horses on the property. The reason for the setback is to be secluded from the neighbors.

Mr. D'Amato asked if there is a contract on the property. Ms. Bonano said yes and went on to say she also has the addendum with the current owner's signature on it stating the contract is contingent on the variance being approved, this document was requested at the last meeting and is on file. Mr. D'Amato asked why the applicant wants to be set back so far. Mr. Bonano said she does not want to be near the road, nor near neighbors. Mr. D'Amato said the request is substantial. Mr. D'Amato asked if the applicant can live with any other setback measurement. Ms. Bonano said it is a narrow property and the problem with moving it up is that there is a pool there and some driveways that go back.

Mr. Hickey noted that Mr. Fisher does not have a problem with the setback. Mr. Fisher agreed and said he would prefer the house setback at 350' as that gives them both privacy.

Town Attorney Lawrence Meckler noted that the motion for variance should state the exact measurement of 350', if approved or denied, as opposed to using the wording "allow up to", it should not be an open-ended variance. The property has been staked.

In response to Chairman Michnik's question regarding a berm, Mr. Fisher said it would be nice. He is in the midst of refreshing his tree line around the property so whatever Ms. Bonano would do would be acceptable, it won't take much perhaps a few spruce trees. Ms. Bonano said she is good with that.

Mr. McNamara cautioned the applicant not to build too close to the wetlands on the property, Mr. Fisher said drainage is a problem.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara, to **approve** Appeal No. 1 under Old Business as written with the following conditions:

- the setback is 350', not "up to" 350'.
- appropriate landscaping is to be built into the process to ensure additional further buffer to the adjacent properties.

ON THE QUESTION:

Mr. Hickey said the area variance is not undesirable, there is a great benefit to Ms. Bonano. In his opinion it is close to being substantial but isn't in light of the spacing between the homes and the size of this particular property, there is no adverse environmental impact, there is no affirmative act to create any difficulty. There is no detriment to the health safety and welfare of the community especially in light of the stated intentions of the applicant.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Daniel Michnik	Aye

MOTION CARRIED.

New Business

Appeal No. 1

Timothy Faulhaber
Traditional Neighborhood District

Requests the Board of Appeals approve and grant:

- 1.) A 1,520 square foot variance to allow for a 2,240 square foot detached accessory structure.
- 2.) A 2' variance to allow for an 8' side yard setback for a detached accessory structure.

Both requests apply to 8115 Stahley Road.

Appeal No. 1 is in variance to §229-66.

DISCUSSION:

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

Mr. Faulhaber is present and said there is no garage on the property. He is looking to build a 3-car garage with storage. The property is setup so that he cannot build a typical 3-car garage and where the driveway currently is there isn't enough room on the that side of the property to build a structure. He is looking to move the driveway to the north side of the property and build a deeper garage to fit the cars and for more storage.

Mr. McNamara asked how big the applicant's house is, Mr. Faulhaber said 1740 square feet. He will eventually connect with an entry way between the house and the garage where there will be a mudroom, the laundry room will be brought up from the basement, and there will be a half bathroom as well. The second floor will be an additional bath with a bedroom connecting the upstairs of the house or it will remain detached and be used for storage.

Mr. Hickey asked what other alternatives the applicant looked at. Mr. Faulhaber said he has a lawn tractor with implements that go on it, shop equipment such as a ban saw and a drill press. He owns a pick-up truck and two (2) SUVs. The proposed square footage is as small as he could go. He wanted to go larger but wanted to stay within reason of the footprint and keep in character with the neighborhood. He noted that there is a barn 500' away that is about 30' x 40', another one 1200' away. His current basement is musty and damp so it is not good for storage, he would like to have storage in the proposed garage. Mr. Hickey asked what materials would be used to build the garage to make it tie in with the existing home. Mr. Faulhaber said they are going for the old farm house look so it will be a board and bed and sided structure of the garage portion. The Phase 2 attached structure would be a stone veneer look. Mr. Hickey asked what the timing is for each phase. Mr. Faulhaber said he hopes to work on Phase 2 within 5 years of completing Phase 1. There are other "barn" looking buildings in the neighborhood so they did not feel they were putting up something strange and out of place. The house is from 1900, so this style seems fitting.

The Faulhabers have lived there for 5 and a half years and they are running out of space. Mr. D'Amato asked if the applicant has explored options on both side of the property with an architect. The other side of the property has 25' to the lot line, if this structure was put there it would not go with the flow of the house, the mudroom size would be limited. There is 46' on the north side of the property so there is more to work with. The existing shed will remain and be used for gardening tools/equipment.

Chairman Michnik asked about the driveway. Mr. Faulhaber said the driveway will be removed and grass will be planted, perhaps a garden and possibly some trees. The driveway will be moved to the other side of the property and will start with crushed stone, then he will do a blacktop driveway. Chairman Michnik asked how soon the project will start once approve. Mr. Faulhaber said he needs to work with the architect in getting the plans finalized then start in June 2017. He hopes to have the garage sealed up by the Fall 2017. There would be a concrete floor and the height would be the same as the existing structure.

ACTION:

Motion by Richard McNamara, seconded by Daniel Michnik, to **approve** Appeal No, under New Business, as written.

ON THE QUESTION:

Mr. Hickey said in this particular community the degree of the variance being substantial is lessened. He does not see this as being an undesirable change. There were no alternate feasible methods, with respect to space. There is no negative physical environmental impact. There has been no negative feedback from the neighbors. Was it self-created? Obviously the property speaks for itself, it is probably the same as when the applicant purchased it. In totaling the benefit to the applicant and the health safety and welfare to the community, the benefit outweighs any possible detriment.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Daniel Michnik	Aye

MOTION CARRIED.

Appeal No. 2

Nicholas Violante
Residential Single Family

Requests the Board of Appeals approve and grant a 340 square foot variance to allow for a 540 square foot detached accessory structure located at 4640 Greenbriar Road

Appeal No. 2 is in variance to §229-55(H).

DISCUSSION:

There are three (3) neighbor notification forms on file. Mr. Violante said they are putting in a pool and want to put in a small building next to the pool, a cabana with a bathroom.

Mr. McNamara said he visited the property and asked if the well feeds the house. Mr. Violante said no, that well is just for the water system for the lawn. The septic system is 15' from the edge of the driveway. The proposed location is because the applicant wants a bathroom near the pool so people won't have to go in the house. It worked out nicely that the septic system is in the backyard so they can pipe right into it. Mr. McNamara cautioned the applicant to be sure not to build on top of the sand filter or leach bed. Mr. Violante said they will be very careful of that.

Chairman Michnik said he drove through the neighborhood and did not see any other structures that were similar to what the applicant is proposing. Mr. Violante said there is one big addition on a house as you enter the new development. There are a couple tennis courts and a basketball court in the neighborhood. They would like to get the pool dug as soon as the lawn dries. Most of the water that sits on the property is in the back. The building would be on a hill. Part of the pool design was that the water run-off goes back down that trench that is behind their house, part of it will be elevated with a two (2) foot wall at the end of the building where it drops down into a lower landing area, there is some drainage in there.

ACTION:

Motion by David D'Amato, seconded by Richard McNamara, to **approve** Appeal No. 2 as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Daniel Michnik	Aye

MOTION CARRIED.

Meeting Adjourned at 8:42 p.m.

Carolyn Delgato
Senior Clerk Typist