

Town of Clarence  
 One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
 Tuesday May 14, 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	Patricia Burkard
Richard McNamara	Jonathan Hickey	Patrick Krey

Town Officials present:

Director of Community Development James Callahan	Deputy Town Attorney Steven Bengart
Councilman Paul Shear      Dave Burke	Joe Saletta

Other interested parties present:

David Burke	Joe Saletta	David Sutton	Noel Dill	Andrew Warne
Jillian Smith	Bracken Brainard	Scott W. Baehre	Michael R. Bray	Kevin Dossett
Derek Landri	John Fisher	Lance Lombardo	Michael Hackford	

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** the minutes of the meeting held on April 9, 2019, as written.

Patrick Krey	Aye	Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Recuse	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 7:13 p.m. and the Zoning Board of Appeals meeting opened.

**Old Business**

**Appeal No. 2** (from March 2019 Meeting)

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".

Chairman Michnik recused himself and left the dais. The appropriate paperwork has been filed with the Town Clerk's Office. Vice-Chairman Ryan Mills presides over the meeting.

## **DISCUSSION:**

Dave Sutton, of Sutton Architecture, is present along with the applicant Noel Dill and Andrew Warne from the sign company. Mr. Sutton distributes an updated version of the sign which shows a slight increase. Exhibit A shows the street view of the sign super-imposed at the location. The square footage of the sign is calculated based on an overall footprint. This sign has to be shared by twelve (12) different tenants. The businesses are all small boutique style retail, most are start-up businesses. The sign is using the materials that are on the building, which is part of the Town Code and recommended to be as compatible and in keeping with the facade that has been established. The sign has been sized and proportionate so that everyone can have a signage opportunity. It has been designed so that each tenant will have a reasonably sized sign 1/12 of the time. The sign is not about advertising product or selling goods or a promotion, it is primarily for the signage of the business. The LED sign will display each individual business' sign for thirty (30) seconds, it fades out and another comes in for thirty (30) seconds, and so on. This has proven to be a formula that is much more effective than a directory that might disappear because of its size and proportion. Mr. Sutton said they feel that the increase in size is important in terms of the perspective and the visibility from Main Street. They do not feel the sign creates any negative in terms of visual obstruction or offensiveness in terms of its size. Mr. Sutton does not think that the addition of colors in the sign will contribute to light pollution. This is not about streaming video, it will be each business' logo, which is the main reason color is being requested.

Mr. Krey asked Mr. Warne if he has done other signs on the street. Mr. Warne said yes they did the Clarence Fire District sign a few months back. Mr. Krey asked how that sign relates, in size, to the one being requested this evening. Mr. Sutton said it is similar in size and submits a copy of that sign, it is labelled Exhibit B and is on file. The proposed sign is within 10%-15% of the Clarence Fire District sign.

Mr. Sutton said there are twelve (12) store fronts in this building. Mr. Hickey asked when the sign would begin and when it would end. Mr. Sutton said the LED display would be continuous, 24 hours. The sign is to enhance the businesses because it is perpendicular to the road and is intended for vehicular traffic. Mr. Hickey asked if the applicant looked at doing anything smaller than what was proposed. Mr. Sutton said it is proportionate to where it is located and the nature of the building it is in relation to, it is very site specific. The scale is small enough to be respectful to the code but yet effective enough. Mr. Hickey asked how big the applicant could have gone. Mr. Sutton said they are prepared to say that this is the right size, they would prefer not to go smaller. Mr. Mills noted that the applicant submitted a photo showing the Willow Square sign, it is on file as Exhibit C. Mr. Sutton said they are willing to limit the sign to just the business names and logos.

Deputy Town Attorney Steve Bengart asked if the applicant is willing to limit the sign to businesses that are only on the premises, as opposed to advertising for other businesses. Mr. Dill said absolutely they will agree to that.

Mr. McNamara said the sign was not staked. Mr. Sutton said there was a construction sign that was there indicating the proposed location, and that was done at the direction of the Planning Department. It is clarified that the sign is not for selling product, it is for advertising the businesses. Mr. Dill said the use of the sign is free to the businesses within the plaza. The sign will be 10' to the right-of-way and will comply with all aspects of the Code other than the three variances they are seeking. Mr. McNamara voiced his

concern with the line of sight when a vehicle is trying to pull out of the parking lot where this big sign is. It is confirmed that there will be a traffic light at the intersection.

Mr. Mills asked about the stone pillars. Mr. Sutton said it will be the same stone as what is on the façade of the building. Mr. Mills referenced the size of the sign and asked if the “of Clarence” is a necessary part of the sign. Mr. Sutton and Mr. Dill both said that is the official name so they want to keep it. Mr. Mills asked about the material of that upper component. Mr. Warne said it will be an aluminum cabinet with push through acrylic letters, the whole sign won’t illuminate, but the letters and the address will. Everything in white on the rendering will illuminate.

Mr. Callahan referenced the code and said recent revisions indicate that light pollution is to be limited in the Main Street Corridor, this is why a law was adopted within the last 6 months to have one color with a black background. There were multiple public hearings and the code revision was adopted in 2018.

Mr. Hickey asked if the applicant can do it with one color. Mr. Sutton said the difficulty is if the sign is for a business it is associated with a logo, a branding. He referenced Exhibit C which shows more than one color. The logo is critical to a business because of easy sighting of the different colors in the logo. A logo is not as effective in black and white as it would be in color. It is not meant to be busy or over-illuminated, it’s just meant to have a respect to the individual’s identity and logo. Mr. Dill said their vision was always to have a similar sign as that of Willow Square’s. Mr. Sutton suggested putting the business’s logos on black or white background. Mr. Dill said they could work with that, however voiced his concern regarding the contrast of the background and the colors in the logos.

Deputy Town Attorney Steve Bengart asked if there is empty space in the building would there be advertising for that on the sign. Mr. Sutton said yes and clarified that one of the spaces is Steven Development, who rents out the spaces.

Mr. McNamara referenced the concern of light pollution and asked if the brightness will be reduced by a percentage at night. Mr. Sutton said that is automatic. Mr. Warne said there is a built in photo eye on the unit so it will be brighter during the day to combat the sun and then will dim down at night. This setting can be adjusted.

Councilman Shear asked if the applicant has tenants lined up or are they assuming they are going to have tenants with logos that have multiple colors. Mr. Sutton said there are some tentative tenants that have multiple colors and he can guarantee that the other tenants will have multiple colors in their logos as well. The Willow Square sign was the prototype and the applicant is looking to do things better with this sign proposal.

Mr. McNamara asked how many colored LED signs are there on Main Street. Mr. Sutton said at least six (6).

Mr. Mills asked Mr. Warne what the proportion of black and white signs versus colored signs that he sells. He sells monochrome and full color, the full color provides much more flexibility. Mr. McNamara asked if the sign can be shut off at midnight and then turned back on at 5 am. Mr. Warne said timers can be set to turn the sign on and off. Mr. Sutton said he would be more in favor of toning down the contrast, he does not think it is a good thing to drive by a sign that is black no matter what time it is. Mr. Dill agreed that they will turn down the illuminations by 50% in the evening hours.

**ACTION:**

Motion by Jonathan Hickey to **approve** Appeal No. 2, under Old Business, as written, specifically with respect to number 3 and the condition of 50% reduction of lumens from dusk to dawn. This motion is withdrawn.

Motion by Jonathan Hickey, seconded by Patrick Krey, to **approve** items 1 and 2 only of Appeal No. 2, under Old Business.

**ON THE QUESTION:**

Mr. Hickey said with respect to items 1 and 2 of Appeal No. 2, under Old Business, the applicant has done a sufficient job in explaining the need, in these circumstances, for increased square footage of both the freestanding plaza sign and the LED sign. There is no adverse physical or environmental impact, there was not a feasible alternative method to accomplish what the applicant desired in items 1 and 2 of the request. These particular variances are not undesirable. This is self-created but is out-weighted by the other elements that the applicant put forth.

Patrick Krey	Aye	Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye	Daniel Michnik	Recuse

**MOTION CARRIED.**

Mr. Hickey asked the applicant what his time frame is, do they have people in yet. Mr. Dill said they anticipate 60 days. Mr. Hickey suggested tabling item 3 to allow the applicant to come back better versed in what alternatives there are. Mr. Sutton asked what the Board is specifically looking for so he can research and be prepared at the next meeting.

Deputy Town Attorney Steve Bengart said if item 3 is tabled, some conditions to consider would be no outside advertising, dark or white background with color. Mr. Mills asked for some visual examples of the LED with logos/colors, and went on to ask for details as to what level the sign can be adjusted at night. Mr. McNamara asked for information on what is normal/acceptable at dusk and what can be done when traffic dies down at night.

The applicant agreed that the item 3 should be tabled.

**ACTION:**

Motion by Ryan Mills, seconded by Richard McNamara, to **table** item 3 of Appeal No. 2, under Old Business.

Patrick Krey	Aye	Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye	Daniel Michnik	Recuse

**MOTION CARRIED.**

Chairman Michnik returns to the dais and presides over the meeting.

**Appeal No. 1** (from Feb 2019 Meeting)

Bracken Brainard  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 196 square foot variance to allow a 196 square foot addition to an existing detached accessory structure.
- 2.) A 1' variance to allow a 4' rear yard setback for a detached accessory structure.
- 3.) A variance to allow chickens on a residential parcel less than five (5) acres in size.

All requests apply to 5171 Glenwood Drive.

Appeal No. 1 is in variance to 1.) §229-55(H) and previous ZBA approval on 12-8-15, 2.) §229-55(E)(1) and 3.) §229-47(B).

**DISCUSSION:**

Mr. Brainard is present and explained he worked with the Town Engineer and came up with new drawings. He submitted new renderings and explained that the metal roof is not on because work was stopped. The new drawings are labelled Exhibits A, B and C. The metal shed was taken away the week after the February 2019 meeting.

Mrs. Burkard asked if the chickens will ever be outside the fenced in area, Mr. Brainard said no. There are six (6) chickens, no roosters. Mrs. Burkard asked if the chickens have been certified as therapy chickens. Mr. Brainard said they are not registered, they could register them if they need to and they have the Cerebral Palsy Association behind them. He cannot spend hundreds of dollars on registering his chickens when there are three (3) other families on his street that have chickens, he feels it is unfair to him if he has to register them. He has a medical letter from the doctor for his daughter's disability in regards to her obtaining chickens. Mrs. Burkard asked what has to be done to register chickens. Jillian Smith, Mr. Brainard's fiancé, said they can be registered on-line, although she does not know all the facts. Mr. Brainard said it is \$100 per chicken if they have to get them certified, and they could but that is \$600 they would have to pay while their neighbors that do not have any certification or letters from their doctor for their child's special needs. Mr. Brainard submitted the letter at the last meeting and said everyone received a copy. The letter is from the Clarence School District, from his daughter's therapist and psychiatrist. Mrs. Burkard asked what happens with the feed and the waste from the chickens. Mr. Brainard said it stays in the structure, he cleans the waste out every three (3) months, bags it up and it goes out to the garbage. Mrs. Burkard voiced her concern with rodents. Mr. Brainard said the feed stays inside containers inside the coops, these containers are what all farmers use. Everything is safe and chicken certified. The chickens are checked on multiple times a day, they do lay eggs.

Mr. Mills asked if the applicant can accomplish what he wants to with his daughter with less than six (6) chickens. Mr. Brainard said he was advised that to have a healthy core of chickens, a minimum of six (6) was the amount to have. No eggs are being sold, they are purely for his family.

David Burke of the Town's Building Department said he and Joe Saletta went to meet with Bracken a couple times to discuss the structure and what needed to change to meet the Building Code. After numerous plans, Bracken finally submitted a plan that addressed all the Building Code concerns. Mr. Burke said they are holding the building permit to see what the result of this meeting is. Bracken will have to dig new posts/piers. He will need to do some work inside the existing structure so he has good bearing points for the

headers holding up the roof structure and the ridge as well. He will change the headers from the “I” joists, which are really used for a floor in a house and for spanning longer distances, it is not a pressure treated product. Mr. Brainard decided to go with double 2 by 12’s, the ridge will be structural in nature as well. Exhibit A is not what the structure will be built like. The plan that Mr. Burke has shows that the structure will be built to the minimum standards of the Building Code. Mrs. Burkard asked Mr. Burke if the different plan will make the structure more pleasing to look at. Mr. Burke said yes as long as he builds what is being rendered. The roof on the structure will be brought in line with the existing roof so it will look like one seamless roof.

Mr. Mills asked how long the applicant envisions having the chickens. Mr. Brainard said until they pass away, they are not going to replace them. The life span of a chicken is 4-6 years. When they stop laying eggs or get sick he will take them to a veterinarian to find out more. He wants to make his daughter’s living healthier and happier. Mr. Mills said if there was a condition set that allowed those 6 chickens until they died and not to replace them, would that be acceptable to the applicant. Mr. Brainard said yes.

Chairman Michnik asked where the chickens were purchased from. Mr. Brainard said Central Tractor, they purchased them in September 2018. Chairman Michnik asked when he started the extra building without a permit, and what made him decide to start it without a permit. Mr. Brainard said his daughter played with one of the family members from up the street and they have chickens. The mother of that family said Mr. Brainard’s daughter has a special knack with chickens and asked if he ever thought about purchasing any. Then they went to Central Tractor and the baby chickens were right there and he could not say no to his eight (8) year old daughter. Chairman Michnik asked if the letter on file came from a psychiatrist or psychologist. Mr. Brainard said it is from Ava’s psychiatrist form the Clarence Central School District. Chairman Michnik said it is from a physical therapist. Mr. Brainard thought they submitted a letter from the psychiatrist and the doctor. Deputy Town Attorney Steve Bengart clarified that the only letter received from the applicant is the letter from the physical therapist. Chairman Michnik said he is willing to help out but he does not have enough proof for what they need to help, they need more documentation. Mr. Brainard said he has the letter from the doctor at home and he will submit it.

Chairman Michnik asked if the chickens ever run loose in the back. Mr. Brainard said they sit with his daughter, they don’t run loose in the backyard, they have never been outside the pen other than his daughter holding them. Chairman Michnik said there is a letter stating that the chickens have been free range. Mr. Brainard would like to see who wrote and turned in the letter. Chairman Michnik referenced the disposal of the waste. Mr. Brainard said the waste breaks up and goes into the mulch. Deputy Town Attorney Steve Bengart asked, if the Board approved this request, would the applicant agree to allow quarterly inspections. Mr. Brainard said yes.

Chairman Michnik said when he built the extension he know he was doing it without permission. Mr. Brainard said yes and went on to say he was in the middle of a home renovation and thought the extension could be covered under that permit. It was noted that a previous variance was granted for the applicant.

Mr. Mills read a letter from Darren Longo, of 5150 Glenwood Drive, received May 14, 2019, into the record, the letter is Exhibit E: “RE: Variance at 5171 Glenwood Drive. It has come to my attention that my neighbor at the above-listed address seeks a variance allowing him to keep chickens on a residential parcel less than 5 acres in the Residential Single Family Zone. I am writing to object to the granting of the variance. First, the applicant, Bracken Brainard, indicates that the chickens are “emotionally supportive animals.” The text of the Americans With Disabilities Act does not protect “therapy chickens” as service animals, and thus Clarence’s local ordinances prohibiting chickens control. Even if a chicken could be a therapy animal,

it would have to be a specifically trained bird, and it would have to be kept in the house, not in a coop for laying eggs. Additionally, even if a chicken were a therapy animal, it would be limited to one in number, not five as the applicant would have the Board believe. An exception to the ordinance is not warranted, particularly since the applicant has not provided any evidence that he has taken steps to certify the chickens in question as therapy animals. What he has in fact done is to obtain the chickens, and then after the fact seeks to assert that they are therapy animals. He as much as admitted this to us on video; when we pointed out that he was not allowed to keep chickens on his property, he responded by telling us “there is always a loophole.” In short, his assertion that the chickens are therapy animals is disingenuous and should be discounted by the Board. Second, no provision has been made for the proper maintenance and upkeep of the chickens. Specifically, the storage of feed so as not to attract rodents and other pests has not been addressed. Nor has proper disposal of the manure the chickens will inevitably generate been accounted for. Nor has the food safety of the eggs which the applicant shares with neighbors and others in the community. The Town of Clarence requires totes for the storage of garbage to keep vermin infestation to a minimum, and the improper storage of feed and disposal of manure compromises the effectiveness of these totes. Furthermore, the chickens are currently not penned when out of the coop. While the applicant has built an illegal coop for the chickens, he has no more allowable space on his 100x200 foot suburban lot for a chicken run. He would need at least 90 square feet for a run, and 18 square feet for a coop. He simply does not have the room for structures of such dimensions given that he has a pool and a number of outbuildings. As a result, we have observed the chickens on repeated occasions running through the applicant’s yard, roaming freely throughout. Third, the applicant’s variance request is essentially a disagreement with the ordinance itself, not the way it applies to his property. There is nothing unique about the applicant’s property which makes the keeping of chickens appropriate or uniquely valuable. The applicant simply disagrees with the Town and the Town’s ordinance prohibiting the keeping of chickens in a Residential Single Family Zone on a lot less than 5 acres. As such, his request for a “variance” should properly be referred to the Planning Commission or other governing body, as it is really a request for a change to the ordinance. Fourth, the applicant did not follow proper procedures in that he did not seek the variance prior to obtaining the animals in question. This is a classic “self-created” hardship – the applicant obtained the chickens and built an accessory structure and *then* sought the variance. The applicant has a history, well-known to the Board, of behaving in this manner by building accessory structures and then seeking permits or variances for same. The Board should therefore disregard any arguments concerning hardship when considering applicant’s request for a variance. Fifth, upon information and belief, the applicant has been distributing to his neighbors the eggs which the chickens produce. The applicant has provided no documentation of his competence to serve as a distributor of produce. Should any of these eggs be contaminated, diseased, or otherwise defective, the Town would face liability for its role in allowing such distribution to take place. Furthermore, who in the Town is going to supervise the chickens? The dog warden? The situation is absurd. The bottom line is that the applicant has done what he wants to do, and is now seeking post hoc justification for his actions, regardless of the impact on the Town and on the neighborhood. Finally, there are property values to consider. We live in a Residential Single Family Zone with lots of less than 5 acres. To allow livestock in this Zone would fundamentally alter the character of the neighborhood, and would open the door for other applications for livestock, which will detrimentally alter the property values in the neighborhood. We purchased our property with the expectation that there would be no livestock in the neighborhood. We have the right to rely on that expectation given the zoning laws which govern our neighborhood. For these reasons, I object to the granting of the variance.”

Mr. Brainard said the information in the letter is false. The individual does not live next to him nor behind him, there is no way he can see Mr. Brainard’s yard, he lives across the street and two (2) doors down. If they were in his backyard then they were trespassing. Mr. Brainard said they change the water and feed the chickens daily. They are not messy eaters, they eat whatever falls. The food is inside the coop, it is not

outside in the run. They do not roam freely. Ms. Smith asked why the Longo's think they don't throw out the waste, how do they know? And how do the Longo's know what they do with the food? Deputy Town Attorney Steve Bengart said the answers to these questions are unknown.

Mr. Mills asked for an explanation on exercising the chickens. Mr. Brainard said there is a run that they use when they come out of the coop. The coop is 6' by 8' with roosts, a window, ventilation, doors. This is all inside the penned in area.

Mr. Mills asked about the distribution of eggs. Mr. Brainard said the eggs stay in their house and they eat the eggs, he would not give his neighbors eggs. They have no intention of selling or distributing the eggs in any manner.

Ms. Smith referenced the property value issue stated in the letter. She put \$130,000 into a \$200,000 house, it went from an ugly house to one of the nicest houses on the street. If anything, they did the neighbors a favor by making their houses go up in value.

Mr. Mills noted there is a letter on file from a physical therapist regarding the daughter's need and benefit of the chickens. Mr. Brainard indicated that he has a letter from a medical doctor, possibly a psychologist, at home. Mr. Mills asked the applicant if he would like the Board to table the request so he can provide that documentation at the next meeting. Mr. Brainard said sure.

Chairman Michnik requested the applicant provide the title of the doctor who wrote the letter. Deputy Town Attorney Steve Bengart clarified that the letter is to be written on letterhead that shows the title of the doctor. The letter needs to state that the chickens are part of the solution. Mr. Brainard said absolutely.

Mrs. Burkard suggested the applicant pursue certifying the chickens as therapy chickens. Mr. Brainard said he cannot spend \$600 on something right now. Mrs. Burkard clarified that he should just look into what it would take to get them certified and provide that information to the Board. Deputy Town Attorney Steve Bengart said he is not sure that the Americans With Disabilities Act covers chickens one way or the other, it doesn't say they are or they are not. So he is not sure getting them certified is going to help make it more legal. Chairman Michnik said the more proof the applicant brings, the better off he is. Mr. Brainard understands. Chairman Michnik asked that the applicant gets the documents to the Planning office in a timely manner so they can distribute them to the Board members appropriately.

Mr. Brainard said with reference to registering the animals, it doesn't matter if they are on your home property, it's when you take them off the property is when it benefits the animal to be registered.

Chairman Michnik said the Board is looking for proof of everything that Mr. Brainard talked about. Mr. Brainard promised to have the paperwork in by Friday and requested his variance request be tabled this evening.

Mrs. Burkard pointed out that the letter that was submitted is from a physical therapist, the school does have a psychologist and while they do work together a physical therapist is not a psychologist.

#### **ACTION:**

Motion by Ryan Mills, seconded by Richard McNamara, to **table** Appeal No. 1 (from the February 2019 meeting) under Old Business.



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

MOTION CARRIED.

**Appeal No. 1**(from March 2019 Meeting)

Scott W. Baehre  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 1,392 square foot variance to allow a 2,112 square foot detached accessory structure.
- 2.) A 12' variance to allow up to a 28' tall detached accessory structure.

Both requests apply to 5015 Salt Road.

Appeal No. 1 is in variance to 1.) §229-55(D) and 2.)§229-55(E)(2).

Patricia Burkard recused herself and left the dais. The appropriate paperwork has been filed with the Town Clerk's Office.

**DISCUSSION:**

Mr. Baehre is present and submitted a copy of the deed and proof that the deed has been recorded. He went on to explain he wants to build a detached pole barn. He does not currently have a garage on his property. He explained that when he bought the house he was told sewers were going to be installed and they would build their garage over the septic system. The sewers were never installed. They went to the County who sold them the piece of property where they want to build. He would like to build a 44' x 48' pole barn, however it would likely be less than that. He would use it to store his cars, his boat, his four-wheelers, lawn equipment and wood working tools. He would like the pole barn to be 30' with a 10' overhang on the side. Laura Baehre is Mr. Baehre's wife and is aware he is here for this hearing. Mr. Baehre submitted a photo of what the pole barn will look like, it is Exhibit A and is on file along with other photos of similar pole barns in the area.

Mr. Hickey asked if there is anything different from the last time he was before the Board in March 2019. Mr. Baehre said there is nothing different, he would guess that the pole barn will be more 40' x 40' including the overhang. Mr. Baehre asked if the gutter hangs over 4" does that count in the 40'? Mr. Callahan said no, just the foundation counts. Mr. Baehre confirms that he is asking for a 40' x 40' structure, this includes the overhang. Mr. Hickey noted that the variance request for a 40' x 40' structure would then be 880 square feet. Mr. Hickey asked if the height variance is still the same. Mr. Baehre said he would like it a little more than 24', it will be a single story but he wants the pitch to match his house.

Mr. Krey asked if the applicant pursued attaching the garage to the house. Mr. Baehre wants a detached garage, he thinks they are safer.

**ACTION:**

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 1 from the March 2019 meeting with the following changes:

- request #1 is approved as an 880’ variance to allow a 1600 square foot detached accessory structure.
- request #2 is approved as an 8’ variance to allow a 24’ tall accessory structure.

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 1 from the March 2019 meeting with the following condition:

- the vinyl on the accessory structure will be white to match the house.

**ON THE QUESTION:**

Mr. Krey asked about the siding on the structure. Mr. Baehre said it will be vinyl siding and will match the house. Mr. Hickey and Mr. Mills agreed to add this as a condition to the motion.

M. Krey said based on what the applicant has shown, the structure does not look like it is out of character with the neighborhood as there are similar structures in the area.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

Dennis & Kelly Kane  
Residential Single Family

Requests the Board of Appeals approve and grant an 8.5’ variance to allow a 4’ side yard setback for the construction of an attached accessory structure located at 6195 Heise Road.

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

**DISCUSSION:**

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

Michael Bray, architect, is present and explained his client would like to build a three-car garage at the front of his house. A side yard setback is necessary to build this successfully towards the east of the property. There is a driveway there that leads to a house that sits behind the Kane’s house, on the other side of that driveway is the Clarence pathway, there are a lot of trees there. Mr. Bray explained that if they put the addition further into the face of the house, they will cover up existing kitchen windows. The request does not impede on any other setbacks and it does not cover more area than what is allowed. He included a few renderings in the packet of what the house would look like when it is complete.

Mrs. Burkard asked what will happen to the existing part of the house that the proposed structure will be attached to. Kevin Dossett, builder, said it will be used for storage. He noted that there are a lot of vehicles in the driveway and asked if that is why they need the garage, this is confirmed.

There is a signed letter from the owners giving permission to Mr. Bray and Mr. Dossett to speak on their behalf at this meeting. The letter is Exhibit A and is on file.

Mr. Mills asked for details on the materials being used. Mr. Bray said the façade will be vinyl sided, mixed with some stack stone like the center portion of the home. The peak of the new garage will most likely be an accent vinyl that will look like the cedar that is on the left portion of the house in the rendering. Mr. Mills asked if there will be additional landscaping along the bike path side. Once they are done there will be no more space to plant trees, currently there is a continuous line of trees. Mr. Mills asked if there is any other way this project can be physically accomplished. Mr. Bray said the garage could be longer and be made into a four (4) car garage but it would be closer to the street, plus it would be awkward on the front of such a small façade for the rest of the house. The applicants think this is the best aesthetic approach. Mr. Mills asked if there is any other way to obtain a three (3) car garage. Mr. Bray said no, if they do not get the variance the garage will have to be a two (2) car garage.

Chairman Michnik noted a small structure attached to the side of the current garage. Mr. Bray said it is a plywood shed and will be removed as part of this effort. The existing garage will become storage. Chairman Michnik read a letter received April 11, 2019 from Robert Jellinick of 6185 Heise Rd, "Please note that I am aware that my neighbor who resides at 6195 Heise Rd plans to do an addition to his home. This addition will not cross my property line. However, I am aware and do not have any issue with the addition approaching and up to my property line." The letter is on file.

#### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1 as written, with the condition that the plywood shed be removed once the project is completed

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

MOTION CARRIED.

#### **Appeal No. 2**

Derek Landri  
Residential Single Family

Requests the Board of Appeals approve and grant a 100' variance to allow a 200' front yard setback for the construction of a single family home at 5795 Newhouse Road.

Appeal No. 2 is in variance to §229-52(A)(3). \*Established front yard setback of 95'-100'.

#### **DISCUSSION:**

Chairman Michnik said there are no neighbor notification forms on file. Mr. Landri is present and said there should be one on file. The other side of his property has a vacant home on it, he called the people who are cleaning the home and they passed the information on to who they thought owned the home. Mr. Landri called three (3) different people and three (3) different banks. The name of the people who own the home are Janice and Edmund Jarzyniecki. The bank would not release any information to him for obvious reasons but the property is in foreclosure.

Mr. Landri does not own the property yet, he has a contract on it and it is his intention to build his home on it. The house will be 2500-3000 square feet. He is requesting the variance because he likes the privacy, he will be taking care of his father who will live with him along with his wife and four (4) children.

Mrs. Burkard noted that there is a property in the area that is located further back and asked if Mr. Landri's would be back that far. Mr. Landri said that property is back about 250', his will be just ahead of that setback.

Mr. Callahan said a minor subdivision was approved by the Planning Board in the 2011 to create two (2) lots. The ownership never followed through on it. When Mrs. Palmerton came in she was going to maintain the property as one and not go through with the split and set the house back 350', this was approved by the Zoning Board of Appeals. This never came to fruition, she never purchased the property. That Zoning Board approval is now null and void. So now we are back to the minor subdivision that has created two (2) lots.

Mr. Landri confirmed that this will be his personal residence. He currently lives on Donnington Road. He will help his father rehabilitate from his amputated leg and eventually his father may be able to live on his own there.

Chairman Michnik asked if the applicant would still buy the property if his request was not granted or if it was granted equal to the neighbors that are there now. Mr. Landri said probably not. In response to Chairman Michnik's question on how much the property cost, Mr. Landri said \$125,000 and there is about five (5) acres of land. Chairman Michnik voiced his concern about setting a precedent for the property that is next to him, if both properties end up building far back they will encroach on neighbors that have lived there for years. Mr. Landri said there is a house in the area that is back 250' and the Board has already granted a 350' variance in the past for this property. Chairman Michnik noted that the 350' setback was granted when the property was not going to be split. Mr. Landri pointed out that there are neighboring outbuildings that are almost 500' back. Mr. Landri does not think his request changes the dynamics of the street as much as the one down the road that is setback at 250'.

Deputy Town Attorney Steve Bengart asked if the contract is subject to this variance being granted, Mr. Landri said it is subject to several things and that is one of them. Deputy Town Attorney Steve Bengart asked if Mr. Landri has anything from the land owner that would indicate that he has the right to request the variance of their land. The property owner signed the Access Consent Form that is on file.

John Fisher, of 5835 Newhouse Road, voiced his concern regarding drainage issues at the property and said that is why the previous sale did not go through. At a 200' foot setback that is great for his privacy but not so great for everybody else's privacy because it puts the house's side views and front view in everybody else's backyards, so everybody else loses their privacy. The house as it is staked is probably about 175' and the drawings on the lot are probably around 225'. Mr. Fisher would like to have his privacy. Mr. McNamara asked about going farther back. Mr. Fisher said the previous variance was so far back that it was out of anybody's view.

Mr. Mills asked Mr. Landri his thoughts on going back farther. Mr. Landri said he does not have a problem with that. It is noted that going farther back may create an issue with the drainage creek that is back there. Mr. Landri would look into what would have to be done to place a house there. Mr. Mills then asked about a 175' setback. Mr. Landri said he hadn't thought about that much, he likes the 200' range.

Chairman Michnik said this is a huge variance.

Deputy Town Attorney Steve Bengart asked Mr. Landri if he wants time to consider the options the Board has discussed or if he wants them to take a vote on his request.

Mr. McNamara asked if the applicant thought of buying both parcels. Mr. Landri said yes but then the house on Donnington became available and they bought that. The parcel to the north of 5795 Newhouse Road was more expensive.

It is clarified that if this request is denied, Mr. Landri would have to come back with a different variance. Mr. Landri would like the Board to take a vote on his request.

**ACTION:**

Motion by Jonathan Hickey to **approve** Appeal No. 2 as written. There is no second.

Motion by Daniel Michnik, seconded by Jonathan Hickey, to **table** Appeal No. 2 to allow the applicant time to revisit the information he has received from the Board this evening.

**ON THE QUESTION:**

Mr. Mills suggested the applicant consider less setbacks along with the alternative of pushing it back even farther. He should also explore different landscape mitigations per the neighbors concern of the views. Mr. Mills would like to see a drawing with berms and how landscaping would mitigate someone seeing in someone else’s back yard. Mr. Landri said he explained the landscaping in his letter that he submitted. As far as moving it back, he does not know what the difference would be because they would still be looking in someone’s backyard. Chairman Michnik said Mr. Landri can explore the options and be on next month’s meeting agenda and if he decides he does not want to come back he can call the Planning office. Deputy Town Attorney Steve Bengart suggested Mr. Landri talk with Mr. Fisher as well to work things out.

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

MOTION CARRIED.

**Appeal No. 3**

Lance Lombardo  
Residential Single Family

Requests the Board of Appeals approve and grant a 2’ variance to allow a 6’ high fence located within the front yard setback at 9450 Roll Road.

Appeal No. 3 is in variance to §101-3(C)(2).

**DISCUSSION:**

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

Mr. Lombardo is present and explained that the grade goes down quite a bit for swales and the natural drainage of the area. He is the last and lowest house on the street. He wants a fence because he has pets and he wants some privacy. Because he is on a corner, he knows that it is two (2) front yard setbacks. Putting a 4’ fence there would be only 1’ above the road because of how low the property is at that point. There is an 8’ difference between where the fence is going and the top of the backyard. The fence material would be white vinyl. Mr. Mills referred to document F-100 as Exhibit A which notes a chain link fence along the north and west sides of the property and a 6’ vinyl fence on the east side and a small portion of

the south. Mr. Mills asked why the vinyl fence is not going all the way around the property. Mr. Lombardo said he has a good relationship with the neighbor to the west of him.

Mr. McNamara asked if the applicant checked for underground utilities in the area. Mr. Lombardo said the utility for electric is underground and just outside the fence to the south about 15'. He is also aware of any other utility lines and will not infringe on them.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 3, as written.

**ON THE QUESTION:**

The applicant has demonstrated that the rear yard is situated at a much lower point than nearby Goodrich Road. For privacy and noise reasons the variance appears to be appropriate.

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

MOTION CARRIED.

**Appeal No. 4**

James Grenauer  
Residential Single Family

Requests the Board of Appeals approve and grant a 3' variance to allow a 7' side yard setback for the proposed addition to the existing principle structure located at 4175 Vinewood Drive.

Appeal No. 4 is in variance to §229-52(B).

**DISCUSSION:**

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

Dave Sutton is present on behalf of Mr. and Mrs. Grenauer and said they have lived in the house for over 40 years. They are both in their 80's and would like to age in place. They are designing a sunroom with a first floor bathroom, the sunroom could become a first floor bedroom. Their existing house has multiple levels promoting some challenges for them in their aging. There are some physical restrictions on this site, the septic comes out the back of the house, there are limitations due to windows and existing roof lines. The side yard setback for this district is 10', they are asking for the addition to be up to 7' of the side yard setback. The unique feature of this property is that the adjacent property is a vacant lot owned by an individual who lives on the next street over, so it is an elongated backyard. Mr. Grenauer talked to the property owner and he had no objection to the requested addition. There are no negative impacts that would be visible from the street or any other properties. The benefits of this request far outweigh the detriments. It is self-created however they do realize that that criteria is not a deciding factor. If the request is not granted they would probably have to consider relocation and that is something they really do not want to do.

Mr. McNamara asked if the applicant thought about moving the addition to jut out. Mr. Sutton said the kitchen window is a restrictive factor along with the connection. The septic system is back there as well and would have to be relocated if the addition was moved, and that is not financially feasible.

Mr. Sutton said all materials will match the existing home. It will be a crawl space foundation. He went on to say they explored numerous designs but ran into physical restrictions, the proposed plan is the only reasonable plan.

Mr. Hickey asked what the project will cost. Mr. Sutton said about \$200 per square foot. The addition is about 340 square feet, so it may cost \$65,000-\$70,000. Mr. and Mrs. Grenauer are the only residents of the house. This is not confirmed but the applicant was told that the vacant lot next to him is not a buildable lot.

### **ACTION:**

Motion by Richard McNamara, seconded by Patricia Burkard, to **approve** Appeal No. 4, as written.

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

MOTION CARRIED.

### **Appeal No. 5**

Michael M. Hackford  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow a secondary detached garage.
- 2.) A variance of 520 square feet to allow a 720 square foot detached accessory structure (garage).

Both requests apply to 5155 Bank Street.

Appeal No. 5 is in variance to 1.)§229-55(H) and 2.)§229-55 (D).

### **DISCUSSION:**

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

Mr. Hackford is present and explained he wants to build an accessory structure 230' from his back door for storage of his all-terrain vehicles, lawn mower and a vehicle he is currently restoring. Currently he has an 8' by 8' shed that needs to be taken down because it is in disrepair. His wife would like to park in the garage in the winter. He wants to keep a neat property and put everything in one place.

Mrs. Burkard asked for details on the materials of the accessory structure. Mr. Hackford said it will match the existing vinyl siding on the house, on the front will be a rustic rough look. There will be electric in the structure. Mrs. Burkard asked what the applicant will do with all the water back there. Mr. Hackford has never seen that much water in the back but he does not believe it will present a problem putting the shed there because it will be on grade and he will follow whatever the building inspector tells him to do.

Mr. Hackford has lived at the property for ten (10) years with his wife and two (2) children. There will be nothing commercial operating out of the structure. His intention is to remain in Clarence. If the structure is approved he will build it as soon as possible.

Mr. McNamara asked if the applicant thought about putting it behind his house rather than behind his neighbor's house. Mr. Hackford spoke, at length, with his neighbors and they are fine with his proposal. One reason he is putting the front porch on it is so it looks attractive. He bought the property so he could stretch out a bit, the structure is 230' away from any house and 12' off the property line.

Mr. Mills voiced his concern and asked if the structure can be pushed out farther. The Board considers subsequent neighbors as well. There is some existing natural vegetation that will block the view of the shed. Mr. Hackford felt as though he was just inside the northern property line. Mr. Mills is suggesting the shed be placed farther away from the neighbor's property. Mr. Hackford said that is an option. Deputy Town Attorney clarified that Mr. Mills is asking if the shed can be pulled further east, Mr. Hackford said he could. Mr. Mills suggested moving it 20'-30' farther east, this would give an adequate natural buffer around it. Mr. Hackford said that is a considerable distance, he is willing to go 22' off the property line.

Mr. Mills asked if the square footage of the structure can be decreased. Mr. Hackford said no, he needs to fit all of his equipment, which costs a lot of money, in the structure for protection. There will not be a driveway to the structure. Mr. McNamara said an extra 30' of wire to run electric back there is not that expensive. Mr. Hackford said he can set the structure back as discussed. Exhibit B showing the structure at 30' off the property line is initialed by the applicant and is on file.

#### **ACTION:**

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 5, as written, with the condition that the structure's location is moved 30' to the east per Exhibit B.

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

MOTION CARRIED.

Meeting Adjourned at 9:50 p.m.

Carolyn Delgato  
Senior Clerk Typist