

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday May 8, 2018
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik
Patricia Burkard

Vice-Chairman Ryan Mills
Richard McNamara

Zoning Board of Appeals member absent: Jonathan Hickey

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 7:06 p.m. and the Zoning Board of Appeals meeting opened.

Other interested parties present:

Chris Galasso
Marc Ruettimann
Christopher Jerome

Dave Stang
Nancy Sheehan
Jay Wendt

Suzanne Stang
Thomas Klebes
Sue Wendt

Sarah Hanson
Bobbi Jerome
Michael & Katrina Hora

Old Business

Appeal No. 1(from January 2018)

Christopher D. Galasso
Industrial Business Park

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

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

DISCUSSION:

Christopher Galasso is present and said they submitted the consultant’s delineation of the wetlands which shows 2.8 acres of non-wetland property at the road, Mr. Galasso thinks this is sufficient area to build a single family home so he is moving forward with his us variance request.

Mrs. Burkard asked how much space the applicant will be using for the house. Mr. Galasso is not certain what the footprint of the house would be but there will be a driveway and perhaps a 3,000 square foot house with a 2-story component to it. He would like to put it back as far as possible, at least as far back as the

house on the east side of the property. Mrs. Burkard asked if he will need a setback variance, Mr. Galasso said he is not that far yet.

Mr. Galasso confirmed that there will only be one single family home on the property, there are no plans to subdivide the property in the future. Mr. Mills asked if it is acceptable to the applicant if that is made a condition of the approval, Mr. Galasso said he is fine with that. Mr. Mills went on to ask if there are any anticipated accessory structures, Mr. Galasso said no.

Chairman Michnik asked how soon construction will start, if this is approved. Mr. Galasso said this is just one of several approvals that he needs to obtain so he would probably start in the Spring of 2019.

Mr. Callahan said the setback of the house to the east is approximately 100', if the applicant aligned with the houses in the area, within 10', he would not need a variance, to be set further back he would need a variance. Mr. Galasso said he would like the opportunity to apply for another variance if he has the room to move it back further.

Mr. Callahan explained that he sent the project out for coordinated review under the State Environmental Quality Review Act (SEQRA). Comments were received. The applicant has provided a wetlands delineation. The SEQRA process is complete and the Zoning Board of Appeals needs to take an action under SEQRA prior to taking action on the variance request.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara, pursuant to Article 8 of the Environmental Conservation Law to **issue** a Negative Declaration on the proposed Galasso use variance located at 9300 Wehrle Drive. This Type I Action involves a use variance to allow the construction of a single family home in the Industrial Business Park zone. After thorough review of the submitted site plan and the Environmental Assessment Form including coordinated review among involved agencies it is determined that the proposed action will not have a significant negative impact upon the environment

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

MOTION CARRIED.

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1, under Old Business, with the condition that the lot not be subdivided any further and that it be utilized for one (1) single family residential home structure.

ON THE QUESTION:

Mr. Mills noted that the Board does not comment on the Wetlands delineation, that is up to the applicant and his due diligence. Mr. Galasso understands.

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

MOTION CARRIED.

New Business

Appeal No. 1

Marc Ruettimann
Residential Single Family

Requests the Board of Appeals approve and grant a 3' variance to allow a 7' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 4615 Thompson Road.

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

DISCUSSION:

Marc Ruettimann is present and explained he wants to put a generator in the side yard of his property. The property line is 12' from the house, the generator sits 2' out from the house. The gas meter is within 5' of the proposed location. There is a chase on the north side of the house to get to the electrical panel, this will make for easier installation. He has no neighbors to the north.

One (1) neighbor notification form is on file and there is a certificate of mailing on file for the other adjacent property owner.

Mrs. Burkard asked if that is a driveway to the north. Nancy Sheehan said no it is used for dumping. Mrs. Burkard asked if there will be landscaping around the generator. Mr. Ruettimann said he wasn't planning on it but can put shrubs around it if requested. The generator is visible from the road.

Mr. Mills asked if the applicant looked at other locations for the generator. Mr. Ruettimann said he looked at the south side of the house but he has a three (3) car garage and it would have to be placed on the outside of that. He would have to trench electric and gas around the back side of the house to reach the generator. There is a neighboring home on the south side of the property.

Chairman Michnik asked if the applicant thought of moving the generator inside the fence. Mr. Ruettimann said no, the proposed location seems like a natural fit for the reasons previously explained. Chairman Michnik said he thinks it would be better placed inside the fence where it will not be seen by anybody. He also doesn't think it will cost that much more to move it inside the fence. Ms. Sheehan said the owner of the property next to them has had that lot for years and uses it for dumping for his business, it is a presumption that it may eventually be built on. Mr. Ruettimann asked if he kept the generator at the proposed location and moved the fence down would that be acceptable. Chairman Michnik said the ingress and egress windows need to have easy access, he prefers the fence remain where it is. The patio is within 12' of the fence.

ACTION:

Motion by Richard McNamara, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written with the condition that the area around the generator be landscaped with shrubbery at least 1' in height on all sides of the generator.

ON THE QUESTION:

The applicant has agreed to the condition as part of the approval.

Chairman Michnik voiced his concern with the sound of the generator, if the generator was placed inside the fence it would mitigate the sound for a future neighbor.

The generator will turn on once a week for approximately 20 minutes, it will be a 22 kilowatt generator.

Richard McNamara	Aye	Patricia Burkard	Aye
Ryan Mills	Aye	Daniel Michnik	Nay

MOTION CARRIED.

Appeal No. 2

Thomas Klebes
Residential Single Family

Requests the Board of Appeals approve and grant a 6' variance to allow a 4' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 6014 Jessica Place.

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

DISCUSSION:

Thomas Klebes is present. One (1) neighbor notification form is no file. Mr. Klebes said they are looking to install a generator due to power outages. He has medical issues in which he needs power.

Mr. McNamara asked why the proposed location is so far out. Mr. Klebes said the cellar window is on that side of the house and the generator has to be 5' from a window. Mr. McNamara asked if it could be moved towards the street because it is in line with the neighbor's back patio, it would be nicer to have it more in between the houses. Mr. Klebes said he would like to do that but with all the openings, vents and windows on the side of the house this was the best location. There is also a radon system that they have to work around.

Mr. Mills asked about the other side of the house. Mr. Klebes said that is common area and will remain vacant. If he put the generator on that side of the house it would be more exposed, he invested a lot to enhance that side of the house so it looks good when you enter the development. He does not think putting the generator on that side of the house would aesthetically fit. Mr. Mills said landscaping can be installed around the generator. Mr. Klebes noted that there are pine trees on that side of the house and if the generator was put there it would make it difficult for the lawn service to get through and he would not want the generator damaged.

Chairman Michnik said he agreed with Mr. McNamara's idea about moving the generator towards the street which brings it more between the houses. He asked the applicant if he is willing to landscape around the generator and Mr. Klebes said absolutely, he will install a couple of wide bushes to block it from the street view. The price for the generator and its installation is approximately \$6,000. Kim Barton is installing the generator, he has done several in the neighborhood.

Mr. Klebes submitted the written approval of the Home Owners Association, it is on file.

ACTION:

Motion by Patricia Burkard, seconded by Ryan Mills, to **approve** Appeal No. 2, as written with the condition that the applicant install landscaping consisting of arborvitaes or similar plantings at least 1' in height.

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

MOTION CARRIED.

Appeal No. 3

Bobbi and Christopher Jerome
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 440 square foot variance to allow a 640 square foot detached accessory structure.
- 2.) A 3' variance to allow a 19' tall detached accessory structure.

Both requests relate to the proposal for a detached accessory structure located at 5130 Alexander Drive.

Appeal No. 3 is in variance to §229-55(H) and §229-55(E)(2).

DISCUSSION:

There are four (4) neighbor notification forms on file. Bobbi and Christopher Jerome are present. Mrs. Jerome said the proposed accessory structure is actually 20' tall to the peak. It is clarified that the second request is amended to read a 4' variance to allow a 20' tall detached accessory structure. Mrs. Jerome said they have lived at this location for eight (8) years, they want to stay in this house but they need room to grow. They do a lot of do-it-yourself projects and their garage is currently their workshop. They need storage room for their UTV and riding lawn mowers. They currently have two (2) vinyl sheds that are at full capacity and items are starting to pile up on the outside of the sheds. She would like to house everything in one (1) structure to avoid the clutter.

Mr. Mills read an e-mail letter dated May 7, 2018 from Barbara Rinaldi to Jonathan Bleuer into the record. The letter states that Ms. Rinaldi is an adjacent home and she does not feel that this structure should be given zoning approval. It is a barn not a shed which is not conducive to the look of the neighborhood. The structure is too tall and is almost the size of a 2-story structure blocking the view. She is also concerned about resale property. The neighborhood has nice deep backyards with nice views and a new buyer may be turned off by this grandiose structure in the backyard. She thanks the Board for consideration in denying this variance. A copy of the e-mail is on file.

Mr. Mills read an e-mail letter dated May 7, 2018 from Kurt Klein to Jonathan Bleuer into the record. Mr. Klein indicates that he is very concerned about the impact of the character of our residential neighborhood. The size and height of this structure will be a permanent scar on the landscape and open view from neighboring homes and will negatively affect their resale value. While the footprint of the structure is an issue he is also concerned about the height. As proposed, views would be obstructed. He wants it to comply with the existing zoning ordinances related to location and height. A copy of thee-mail is on file.

Mrs. Jerome clarified that Kurt Klein does not live in the neighborhood, he is Barbara Rinaldi's boyfriend.

Mr. Jerome said there are other sheds that are close to their house that are actually higher. The garage at 10470 Alexander is 26' high. There is another garage close in proximity that is 20' high and one next to that which is over 20' high. Chairman Michnik said the permit for the garage at 10470 Alexander was for a 16' high structure, the permit was issued in 2007 and the structure was built in 2009.

Mrs. Jerome said this will not be an eyesore, she plans on putting grapevines on trellises around the proposed shed as landscaping. Her goal is to always increase the resale value.

Jay and Sue Wendt are the contractors and are present for any questions concerning the structure.

Mr. McNamara asked if the applicants thought about putting a third car garage on the house. Mrs. Jerome said they did think of that but there is not enough room to add on to the current garage. Their recent addition was to the front of the house. Mr. McNamara asked if there is any way the applicant could reduce the height. There will be attic space in the proposed structure for building materials, the applicants rebuild furniture and make pallet furniture. Mr. Wendt said the wall height on the first floor is 10' and the height of the attic space is 9', it is a gable roof. Mr. McNamara suggested reducing the height to 16'. There will be electric in the structure, it will be a pole barn.

Mrs. Jerome confirmed the other two structures will be removed from the property. Mr. Mills asked if that was made a condition of the variance is that acceptable to the applicant. Mrs. Jerome said yes. She confirmed that there will be no business operations conducted out of the structure and it is acceptable to make this a condition of the variance. Mr. Mills asked what materials will be used. The whole structure will be metal and will be the same color as the house. Mr. Mills voiced his concern regarding the height as well as the footprint and asked if the footprint can be scaled down at all. Mrs. Jerome said the structures that are currently there along with the things that are surrounding it is actually a larger footprint that what the proposed structure will be. She went on to explain that half of the proposed square footage is on the second floor. The first floor is only 320 square feet. Mr. Mills confirmed that the variance should be 120 square feet to allow a 320 square foot detached accessory structure.

Mrs. Burkard asked where the windows will be on the structure. Mrs. Jerome referred to Exhibit B which is a rendering of the structure and indicated there will be two (2) windows on the front and one on the back of the structure.

Chairman Michnik asked if the applicant can move the proposed structure to the back property line. Mrs. Jerome's preference is to have it at the back property line however the ground is not level. There is a large dip. They are putting the structure back as far as they can before hitting a steep downslope. There is a swale back there and during heavy rains it turns to mud. All the surrounding backyards pitch to the Jerome's property. They would have to bring in a lot of fill to level the ground.

Chairman Michnik is very concerned about the height, he would like to see it at 16', so it will blend in with the area. Mrs. Jerome said the dead evergreens will be removed, one has already fallen from the last storm. One healthy tree will remain. The existing sheds will go to Mrs. Jerome's parents. Chairman Michnik asked if Arborvitaes can go on the property line to block the view of the structure. The Jerome's are considering a 6' privacy fence. Everything that has been planted in the low spot has died because of the drainage and the excessive water. Chairman Michnik strongly suggested planting 5 or 6 6' high Arborvitaes or Junipers along the south property line to block the view for the neighbors until a fence is installed. The Jerome's do

not want to attract deer. It is clarified that if the Jerome’s install a fence they do not need to install plantings on the property line.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** part one (1) of Appeal No. 3 which is a 120 square foot variance to allow a 320 square foot detached accessory structure subject to and contingent upon the following conditions:

- the other two (2) structures come down contemporaneous with the installation of the new structure.
- no businesses be operated out of the structure.
- 5-6 Juniper or similar type shrubbery approximately 6’ in height be erected along the south side of the property to shield the neighbor or in the instance a fence is erected within 90 days of the Certificate of Occupancy being issued then the shrubbery would not have to be installed. If the shrubbery is installed it needs to be approximately 2’ apart or to manufacturer’s specifications.

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

MOTION CARRIED.

It is clarified that the height of the structure is to be 16’ maximum, in which a variance is not required.

Appeal No. 4

Katrina Hora
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 200’ variance to allow a 250’ front yard setback for the construction of a single family home located at 8100 Lapp Road.

Appeal No. 4 is in variance to §229-31(A)(1).

DISCUSSION:

One (1) neighbor notification form is on file. Ms. Hora said she tried to contact the neighbor to the left six (6) times but he does not answer the door. Mr. Callahan provided testimony that the property owner at 8060 Lapp Road has knowledge of the variance request. It is clarified that the applicant will be assigned a street address number once they apply for the building permit.

Ms. Hora said she wants to set the house back to be more in line with her father’s house and for privacy reasons.

Mr. Mills asked for details on the structure. Ms. Hora said she plans on a single family home, 2-story, 4900 square feet in size. Hora construction will be building the home. They have drawings for the house but they did not bring them to the meeting. Ms. Hora said she can send them to the Board. The house is in a floodzone. Ms. Hora has been working with GPI who is doing the elevations and she is aware they have to apply for a LOMAR. She is not going 300’ back because there are Federal Wetlands there. Mr. Mills asked the applicant if they would place it closer to the street if the variance was denied. Mr. Hora said that would be the worst case scenario.

Mrs. Burkard asked if there is on-going construction on the site. Ms. Hora said yes at 8100 Lapp Road, that is her father doing the construction for a house on the property.

Mr. McNamara asked what is going on with the property between Ms. Hora’s proposed house and her father’s house. Mr. Hora said nothing is planned.

Chairman Michnik said if the board asked the applicant to move the house forward would they continue to build. Mr. Hora said they would, but they really want it back that far because they are trying to keep as much brush in the front and have a longer driveway to keep the house tucked into the landscape and not seen so much from the road. Chairman Michnik explained the Board gave a 300’ setback for a house at 8100 Lapp Road because of wetlands on the property.

Mr. Callahan noted that the neighbor at 8060 Lapp Road did not object to the variance but would like the house as far away from his as possible.

Mr. Hora said his property has 300’ of frontage and is just under 5 acres in size.

ACTION:

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

ON THE QUESTION:

Mr. Mills said there is testimony and evidence from prior minutes that 8100 Lapp Road is at a setback of 300’ and this request being at 250’ would bridge a connection to the existing setback at 8040 Lapp, 8050 Lapp and 8060 Lapp.

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

MOTION CARRIED.

Meeting adjourned at 8:15p.m.

Carolyn Delgato
Senior Clerk Typist