

Town of Clarence
 One Town Place, Clarence, NY
 Zoning Board of Appeals Minutes
 Tuesday July 10, 2018
 7:00 p.m.

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

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
Richard McNamara	Jonathan Hickey
Patrick Krey	

Zoning Board of Appeals members absent: Patricia Burkard

Town Officials present:

Director of Community Development James Callahan
 Deputy Town Attorney Steven Bengart
 Councilman Paul Shear

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** the minutes of the meeting held on April 10, 2018, as written.

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

MOTION CARRIED.

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 12, 2018, as written.

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

MOTION CARRIED.

Other interested parties present:

Henry Jurek	Chris Galasso	Sue Stang	David Stang
Debra Ann Lattuca	Charles Lattuca	Richard Thering	Anthony Napoli
Peter Morgan	Frank Menza	Kate Steele	Ed Steele
Bob Osiewicz	Maxine Osiewicz	Garry Soehner	Anthony Ricchiazzi
Rosanna DiSalvo	Frank Capodagli	Brian Burr	

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:02 p.m. The session ended at 7:06 p.m. and the Zoning Board of Appeals meeting opened.

Old Business

Appeal No. 3(from June 2018)

Paul and Sharon Barker
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a 350' front yard setback for the construction of a single family home located at 5045 Kraus Road.

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

DISCUSSION:

Henry Jurek, of Jurek Builders, is present. He is the builder and is representing the applicants. There is no documentation on file giving Mr. Jurek permission to represent the applicants. There are three (3) neighbor notification forms on file. Mr. Jurek said he has been on file with the Building Department for two (2) months trying to get this approved. The applicants are out of the country for another week. Deputy Town Attorney Steven Bengart said there must be documentation from the applicants giving their permission to Mr. Jurek to represent them at this meeting, an e-mail is acceptable.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **table** Appeal No. 3 under Old Business for sixty (60) minutes to allow the applicant time to contact the applicant.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart asked Mr. Jurek to contact the applicants and have them send an e-mail to Deputy Town Attorney Steve Bengart advising they give permission to Mr. Jurek to act on their behalf at this meeting. If the applicants can't be reached the appeal will be tabled.

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

MOTION CARRIED.

New Business

Appeal No. 1

Christopher Galasso
Industrial Business Park

Requests the Board of Appeals approve and grant a 100' variance to allow a 200' front yard setback for the construction of a residential single-family home located at 9300 Wehrle Drive.

*Established residential front yard setback of 100'.

DISCUSSION:

Mr. Galasso is present and explained he is seeking a variance to set the house as far back as possible but less than 200' from the right-of-way, this due to the 100' buffer associated with the wetlands. Copies of the neighbor notification forms that were mailed are on file. Mr. Galasso said the request is for privacy and protection against road noise.

Mr. McNamara asked where the wetlands are. Mr. Galasso said his consultant delineated the wetlands, flags are placed but he has not yet surveyed the flags. Mr. McNamara asked if the house could be moved to the west. Mr. Galasso said the wetlands encroach the easterly line all the way to Wehrle Drive and across the frontage toward the west so that forces placement of the house further west. Mr. McNamara asked how far west the applicant is willing to go. Mr. Galasso has not thought about going further west, it would put him closer to a light industrial use that looks like an old substantial fill area.

Mr. Hickey asked for clarification on what measurement the applicant is asking for. Mr. Galasso said somewhere between 100' and 200', he estimated about 120'. He will have a survey of the wetland area. He knows that he has to be outside the 100' buffer from the wetlands, his intent is to have the back of the house as close to the 100' buffer as possible, but he thinks that will put the front of the house very close to the 100' from center. In response to Mr. Hickey's question regarding the size of the house, Mr. Galasso said it will be about 3,000 square feet although he does not have a plan yet. Mr. Galasso said he does not yet own the lot but he will soon. This matter is not a condition of closing.

Mr. Hickey asked if there are other reasons for the requested variance. Mr. Galasso stated that besides privacy and road noise, and due to the wetlands in the back, the septic will need to be in the front. The relief will give him enough space to put that in the front. Mr. Hickey asked if there is any economic component as to where it is placed. Is it more/less expensive to do it at 125' versus at the 100' line? Mr. Galasso said it will cost more the further back he goes.

Mr. Mills asked if Mr. Galasso has any documentary evidence for where the flood plain/zone areas are. Mr. Galasso submitted a map from Earth Dimensions that shows the wetlands, it is on file as Exhibit A. Mr. Galasso tried to scale the house on the map. Mr. Mills asked Mr. Galasso if it is his testimony that because of the wetlands boundary areas and the actual wetlands, that the best place to put the structure would be between 100' and 200' back. Mr. Galasso responded yes. Mr. Mills asked if there is anywhere to put the structure outside the 100' to 200' area. Mr. Galasso said he does not see it being practical because the wetlands wrap around to the front, they are on the east, north and south sides of the property. Mr. Mills noted that Exhibit A, which is dated 5/2/2018, shows the wetlands.

Charles and Debra Lattuca live at 9230 Wehrle Drive and stated they are supportive of the request. Mr. Lattuca said when they built there about 15 years ago they had to stay 100' off the road. When he received the letter from the attorney he was very against having anybody in his backyard. He has had that nice buffer of woods next to his house for the past 15 years and now he does not want to have a house behind where he is. He thought about building further back too but decided to stay in line with the other houses in the area.

Dave and Sue Stang are present. They reside at 9285 Wehrle, they have lived there for 32 years.

Chairman Michnik asked if the applicant has any plans to move any of the shrubbery and trees that are along the east side. Mr. Galasso said he does not think he can because it is all wetlands. It is clarified that what is there is going to stay. The existing buffer will not be disturbed, it will remain. Mr. Galasso said he plans to enhance the existing buffer by building earthen buffers inside the current buffers. This will be his personal residence where he lives year round.

Debra Lattuca said it is her understanding that the buffer being discussed from Wehrle Drive going towards the bike path is 100' deep of wetlands, she asked for confirmation and clarification on the location of the wetlands. She asked if the wetlands are 100' from her property line. Deputy Town Attorney Steven Bengart said they cannot tell her what wetlands she does or does not have. They have a delineation but it has not been approved by the Army Corp of Engineers (ACOE) yet so it is not official. Earth Dimensions is a reputable company so Deputy Town Attorney Steven Bengart said most likely when it is submitted to the ACOE it will be exactly or very similar to their records. Exhibit A is shown to Mrs. Lattuca. Mr. Galasso said he may not encroach within 100' of the skinny wetland, so there would be the wetland plus 100'.

Mr. Hickey asked Mr. Galasso what conservative number might be for this request. Mr. McNamara reference Exhibit A and after further discussion regarding footage and calculations he thinks the request should be closer to 150'-175'.

Mr. Galasso said his intent is to honor the 100' setback both in front and in back. The ACOE and the NYSDEC will let him build within the 100' setback regardless of what the Zoning Board of Appeals does. He is asking for some wiggle room because he does not know where he needs to be. He is saying he will be somewhere between 100' and 200' he just does not know where. Deputy Town Attorney Steven Bengart asked if Mr. Galasso is going to build either way, to which he replied yes. Deputy Town Attorney Steven Bengart said the Board could table the request to allow time for Mr. Galasso to obtain the ACOE approval, and then he can come back to the Board and know what he needs. Mr. Galasso asked if the Board can give him a range, not a specific number. Deputy Town Attorney Steven Bengart said he is not sure the range will give Mr. Galasso what he wants, and if it doesn't because the Army Corp says it's no good, then Mr. Galasso would have to come back to the Board. Mr. Galasso said he knows he will not need more than 200', he believes it will be closer to 100'.

Mr. Hickey said to approve the range of 100' to 200' is in essence approving 200'. Part of the law dictates the most restrictive feasible alternative which is why this is tricky when we don't know that number is.

ACTION:

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **table** Appeal No. 1 based on all of the reasons discussed, and allowing Mr. Galasso time to, at a minimum, have the property surveyed in light of the wetland restrictions.

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

MOTION CARRIED.

Appeal No. 2

Richard Thering
Residential Single Family

Requests the Board of Appeals approve and grant:

- A.) A 150' variance to allow a 190' front yard setback for the construction of a residential single-family home.
- B.) A variance to allow an existing detached accessory structure within the front yard setback.

Both requests apply to 8529 Stahley Road.

Appeal No. 2 (A) is in variance to §229-52 (A)(3) *Established front yard setback of 40'. Appeal No. 2 (B) is in variance to §229-55(D).

DISCUSSION:

There are two (2) neighbor notification forms on file. Mr. Thering is present said he is trying to put a house on the property while keeping the existing drainage and the existing plantings intact, yet still having the option to retain the building that currently exists. He listed the proposed house as a generic size ranch and it is as deep as he would ever want to put it. More than likely the house would be moved forward, but he went to the extreme. There is a planting of 25' Spruces that ring around the property which gives a lot of seclusion to this whole process. He put a berm and a row of Spruce down the west line. Part of the back of the property goes to Ransom Creek and there was a berm installed 30 years ago when Meadowlakes was built. The berm is 40' off the creek with 20' Spruce trees. Mr. Thering has an agreement with Tony Napoli which is contingent on this approval so there is some type of flexibility with what he can do with the lot.

Anthony Napoli of 6181 Shamrock Lane noted that his daughter lives at 8555 Stahley Road. Mr. Napoli and his wife would like to build a home at 8529 Stahley Road. They have an agreement but they do not want to put the house that close to the street, they want to set it back. They have been looking for a place to build a home but a 40' setback is too close to the street for them. They would like the option to bring the house back as far as they want. It is a deep lot and will give them privacy. Mr. Thering said there has been 30,000 square feet of greenhouses at the property for 35-40 years. The drainage on the site is set up so that if a house is built per zoning requirements the drainage system would have to be reconfigured because the property was set up to be elevated in the rear because of the structures there. Not that it couldn't be redone, but it would effect not so much his mom's property but the property he lives in. Mr. Thering explained the property frontage is about 147' with the rear almost 170' wide, the lots are at an angle. There were elevation issues because of the flood plain. He reviewed the topographic map with Tim Lavocat, the Town Engineer.

Mr. Krey asked why Mr. Napoli wants to keep the existing pole barn. Mr. Napoli said he is not sure if he does, he may want to put the house next to the pole barn, he is not sure but he wanted that option. He may use it to store the cars he owns. Mr. Krey noted that it is unusual to have a structure like that in the front of the home. Mr. Napoli referred to the survey submitted with the application and stated he is not sure where they want to place the house. It is a unique situation but the pole barn works perfectly for him to store his

cars. He would like the option to bring the house back. Mr. Mills asked if there is enough space to build the house given side yard setback requirement, which is 12.5'. Mr. Napoli said there is 70' after the side yard setback is taken into consideration. It is about 80' to the front of the pole barn. If the house is allowed to be moved back, it's almost 80', which is tight but feasible to put a house next to the building. The pole barn is 25 years old.

Mr. Krey noted his concern saying that the request is for 190' setback, but now Mr. Napoli is saying he wants to have it next to the pole barn. Mr. Thering said he sat with the surveyor and put the house back as deep as they thought feasible, what is presented is the extreme depth. What they are looking for is a little wiggle room to get away from the setback. They are looking for a minimum of 80', the house will never go back as far as what is proposed.

The lot is 147' wide, Mr. Callahan said it is a good building lot.

Mr. Napoli said he is all about visual, so whatever he does it is going to look right.

Mr. Thering said he had an option to sell the lot for more money than what he is selling it to Mr. Napoli for. If he thought it would detract from either of the properties he would not do it.

Mr. Thering noted that the property is on a sewer system, not a septic system.

Mr. McNamara asked if anything would be built in the back of the property like a pool. Mr. Napoli said he does not want a pool.

Mr. Mills asked if Mr. Thering could point to any current setbacks on Stahley Road that would be similar to what he is requesting. Mr. Thering said there are numerous similar setbacks on Stahley Road, and a few down the street towards County Road, but no addresses were provided. Mr. Mills asked if there are other parcels that have a pole barn type structure in front of the house. Mr. Thering said there is nothing like that on Stahley Road. Mr. Mills voiced his concern with the aesthetics of the pole barn being in front of the property in this residential area. Mr. Napoli said he is not going to build a house with a pole barn in the front. He would build his house next to the pole barn. Mr. Mills asked if Mr. Napoli would agree to mitigate the look of the pole barn with stone or brick or some nice aesthetic façade. Mr. Napoli agreed and said if he puts the house in the back then the pole barn will go.

Chairman Michnik voice his concern saying a precedent is being set by having this house set far back. He would like to see some blueprints of the house and some definition as to where the applicant is looking to go, this will give the Board a better idea of what the applicant is looking for. He does not see any houses within 100' feet going east or west on the south side of the street that is asking for what the applicant is asking for. The Board cannot just change the law all the time, there is a reason the law is set up. This is a huge variance. Chairman Michnik said the applicant needs to decide whether he wants to move forward with the pole barn or without it and come back with a definite setup. Mr. Napoli said he would then have to make a decision today what he wants to do 1-3 years down the road. Mr. Napoli said if he were to purchase the property would he be able to come back and ask for a variance when he knows what he wants to do. Chairman Michnik said Mr. Napoli would be taking the chance to determine what that Board will do at that point, he could come back but the laws could be even more strict. Mr. Hickey clarified that he is free to come back anytime once he purchases the property.

Mr. Thering said what if he narrowed down the option to a minimum of 80' and a maximum of 110', which is only a 30' difference. Chairman Michnik said he not comfortable with the situation.

Mr. Napoli said the minimum they would like to setback the house is 80'. He went on to say that if the house was built adjacent to the pole barn the structures would not be attached to each other. Mr. McNamara said if the two structures were attached or if there was a breezeway connecting the two, the pole barn then becomes part of the house.

Mr. Hickey said he does not feel this is an unreasonable request, in terms of the distance, however he agreed with Chairman Michnik that further information should be submitted by the applicant.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **table** Appeal No. 1.

ON THE QUESTION:

Mr. Hickey said Mr. Thering and Mr. Napoli have been transparent with the request. Once further details, as discussed, are submitted to the Board he feels the applicant can accomplish what he wants to.

Mr. Mills said any other data the applicant can provide, such as elevation drawings, would be helpful. He should provide details on the specific location of the house and what will happen with the pole barn.

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

MOTION CARRIED.

Appeal No. 3

Peter B. Morgan
Residential Single Family

Requests the Board of Appeals approve and grant a 6' variance to allow a 22' tall detached accessory structure located at 5450 Thompson Road.

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

Richard McNamara recused himself from discussion and voting on this agenda item, and left the dais.

DISCUSSION:

Peter Morgan is present and explained that this request is a follow up to a variance he received November 2015, which was for an area variance and a height variance. The area variance was granted but there was neither a "yes" nor a "no" for the height variance. Mr. Gross of the Building Department advised Mr. Morgan to stop construction until there is a definite answer for the height variance. The neighbors were notified with the original request, the height request has not changed since the original request.

Mr. Hickey clarified that the motion from the last meeting failed to reference the height request. Mr. Mills said "On the Question" is where the Board addressed the height. The neighbors are the same from the last

meeting in 2015. Mr. Morgan said the use of the structure remains the same as was presented in 2015, no plumbing, it will be a workshop for him year round.

Mr. Mills asked why the extra height is needed. Mr. Morgan said if there are two levels you cannot do 16'. For a woodworking shop at least 8' is needed and he wants to be able to stand up straight. The plan shows 4½ and 12", which comes out to 21'3". This is the minimum height to satisfy the second floor requirement.

It is confirmed that the holes at the site is where the foundation area is. Currently there are two (2) sheds on the property, this will be a third structure. Chairman Michnik said the record reflects Mr. Morgan has three (3) sheds on his property but the code allows two (2). Mr. Morgan hopes he does not have to remove a shed, he does not remember it being a requirement. There was further discussion noting that he was approved for the third structure from the previous meeting. Mr. Mills said the action from the previous meeting did not specifically address the request for a third structure, however Mr. Hickey said it is implicit.

Mr. Hickey asked if this is the minimum height that Mr. Morgan can do to get what he wants accomplished. Mr. Morgan said yes. He has lived at this location for 17 years.

ACTION:

Motion by Jonathan Hickey, seconded by Patrick Krey, to **approve** Appeal No. 3 with the amendment as follows: to grant a 5'3" variance to allow a 21'3" tall detached accessory structure.

ON THE QUESTION:

Mr. Hickey said there are rare, if not unique, features to Mr. Morgan's property that would permit a variance in this setting. In terms of how substantial the request is, it is not insignificant but there are no adverse physical impacts. The request has not changed since the applicant was before the Board in November 2015. There are no other feasible options to accomplish what Mr. Morgan is looking to do, he has explored all other options.

Mr. Mills agreed with Mr. Hickey's remarks and expanded on them noting that there is extensive visual blockage and foliage around the property that buffers it. The size of the parcel and the setback from the neighbors are also additional factors that contribute towards granting the variance. He wants the applicant to understand that the current code allows for two (2) accessory structures and Mr. Mills believes there are more than two (2) accessory structures currently on the property. Looking at the aerial of the photo he said it appears that there are two (2) sheds, a greenhouse and this structure, so a total of four (4) accessory structures. Mr. Morgan said he would like to keep three (3) structures on his property, the greenhouse will be removed.

The following is added to the above motion: a third accessory structure, which this would be, is permitted. This requires Mr. Morgan to remove the fourth structure, which is the greenhouse. Mr. Hickey and Mr. Krey agree to the addition.

Mr. Mills said all the same reasons as stated above for the first prong of the variance apply for the granting of the second prong which allows a third accessory structure on this parcel.

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

MOTION CARRIED.

Appeal No. 4

Frank & Marie Menza
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow a 6' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 6039 Jessica Place.

Appeal No. 4 is in variance to §229-55(E)(1).

DISCUSSION:

Frank and Marie Menza are present. There are three (3) neighbor notification forms on file.

Mrs. Menza said they are looking for an in-home generator.

Mr. Krey asked how many homes in the subdivision have generators, Mr. Menza said quite a few. Mrs. Menza said there are four (4) that already have them and four (4) more that are getting one. Mr. Krey asked why they need it at 6', Mrs. Menza said she was told that is what they need. Chairman Michnik said they are looking for a variance on the side yard, the code is a 10' requirement.

Mr. Hickey asked the applicant to provide details as to why they need the generator. Mrs. Menza said Mr. Menza has a lot of health issues, he has AFib, cardio-vascular problems and he gets colds a lot. Their property loses electricity a lot. She is concerned that if they lose electricity for a while, it could cause problems for his health. She said they lose power about five to six times a year. Mrs. Menza said sometimes the loss of power is weather related, sometimes a transformer blows and occasionally they will receive a call saying they may lose power, and to be prepared.

Mr. Hickey asked who will be installing the generator. Mrs. Menza said it is the same guy who has been installing them in the neighborhood. Mr. Hickey asked if they have a Homeowners Association (HOA). There is an HOA, Chairman Michnik read a letter from the HOA into the record, "This letter is to confirm receipt of your request to install an exterior permanent home generator at the side of your home at 6039 Jessica Place. After reviewing the drawings and associated data which you provided, we affirm that your request is in compliance of our association by-laws. Also, we find that the proposed project's implementation is in character with our neighborhood and follow precedent of units currently installed. Therefore contingent on your project meeting all Town and legal requirements, the board of managers is happy to approve the project." The letter is signed by the Board managers and is on file. Mr. Hickey asked how often the generator will have to run to maintain itself. Mrs. Menza does not know. The cost of the project will be just over \$5,000.00. Mrs. Menza said they have lived at this residence for six (6) years.

ACTION:

Motion by Patrick Krey, seconded by Jonathan Hickey, to **approve** Appeal No. 4, as written.

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

MOTION CARRIED.

Appeal No. 5

Edward R. Steele
Planned Unit Residential Development (PURD)

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

Appeal No. 5 is in variance to §229-55(E)(1).

DISCUSSION:

Mr. Steele is present. One (1) signed neighbor notification form is on file. There are two (2) other neighbor notification forms on file but they are not signed. Mr. Steele said there was no request to get the notifications back to the board. He can obtain them if necessary.

Mr. Steele said they want to put a generator on the side of the house, he referred to the diagram and said the south side of the house is the only side that would accommodate the generator according to the engineer that came out to look at the property. The back of the house is entirely windows, the north side of the house is full of concrete and driveway, and he does not think they would approve the front of the house. It is a unit that is smaller than the air conditioning unit that currently sits there, it measures 23" x 23". Mr. Steele said he will pick and choose what he wants to supply power to, they do not want the washer and dryer powered, he will pick twelve (12) circuits.

Chairman Michnik referred to the paperwork on file that shows the size of the generator as 26" x 28", he ask if that is the size they are looking at because Mr. Steele previously described a different size. Mr. Steele said the size is what is contained in the diagram which is 26" x 28".

Mr. Steele said they have lost power many times. They have lived in the house since 2010. Mr. Hickey asked if there is anything in particular that triggers the loss of power. Mr. Steele said Waterford loses power frequently. Buffalo Power Systems will be installing the generator and provided a quote of \$7,000. Mr. Hickey asked how often the generator will need to run, Mr. Steele replied once a week for 10-15 minutes.

Mr. Steele said the neighbor at 6020 Wexford has a generator.

Mr. Mills referenced the notice to 6008 Wexford, Mr. Steele said it was mailed to them but they have not responded nor has any further contact been made. Mr. Mills said he was on location today, those neighbors appear to be home, and it appears they just chose not to respond. Mr. Mills voiced his concern saying it will impact this neighbor the most. The generator will be situated between the air conditioning unit and the pool, the installer agreed with this location.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik to **approve** Appeal No. 5, as written.

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

Daniel Michnik Aye

MOTION CARRIED.

Appeal No. 6

Robert Osiewicz
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow a 6' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 8250 Clarherst Drive.

Appeal No. 6 is in variance to §229-55(E)(1).

Chairman Michnik recused himself and left the dais. Vice-Chairman Ryan Mills will preside over the meeting.

DISCUSSION:

Robert and Maxine Osiewicz are present. Mr. Osiewicz said the utilities are on that side of the house and it has a 10' setback from the property line. They do not want to put it in the front of the house, and they would have to ask for a variance to put it in back of the house and they would have to extend the utility lines.

There are two (2) Neighbor Notification forms on file. The applicants have spoken to both the neighbors, and they are both in favor of the proposed location of the generator.

In response to Mr. Hickey's question asking how long the applicants have lived in the home, Mr. Osiewicz said 30 years. Mr. Hickey asked if they lose power, Mr. Osiewicz said yes, they lost power during the October Storm and since then they have lost power for several hours at a time. Mr. and Mrs. Osiewicz said they do not lose power on a regular basis but about four (4) months ago they lost it for four (4) hours. Mr. Osiewicz said the generator is sixteen (16) kilowatts, it will power most of their home which is 2100 square feet in size. The generator will need to run once a week for five (5) minutes at a time, they can set the time it will run. The estimated cost of the project is \$7800, Sietzman Appliance will be installing the generator, they have done several in the immediate area.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara to **approve** Appeal No. 6, as written.

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

MOTION CARRIED.

Chairman Michnik returned to the dais.

Appeal No. 7

Gary Soehner
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow a 6' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 6057 Jessica Place.

Appeal No. 7 is in variance to §229-55(E)(1).

DISCUSSION:

Mr. Soehner is present and said they need an emergency generator. They are Snowbirds and spend about five (5) months in Florida. They have a sump pump, security system and a furnace. They lost power about five (5) times just in the past year, once for about eight hours. With a finished basement, it is an uncomfortable feeling.

There are two (2) neighbor notification forms on file. Mr. Soehner submitted the letter from the Homeowners Association which approves the request.

Mr. Soehner has lived at this residence for six (6) years and said he has lost power about five (5) times just in the past year. They have been leaving for the five (5) months for the past three (3) years, and it is their intention to continue doing so. Tim Barton will be the installer, he is the same person that has installed many other generators in the subdivision. The generator will be the same small residential unit that the others in the neighborhood are using. Mr. Soehner said the generator will run no more than once a week, for 10-15 minutes at a time. It can be set to run at the time they choose. The cost of the project will be approximately \$5,000. It is an 11 kilowatt generator and is Wi-Fi equipped.

Documentation is submitted showing the details of the generator.

ACTION:

Motion by Richard McNamara, seconded by Patrick Krey to **approve** Appeal No. 7, as written.

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

MOTION CARRIED.

Appeal No. 3(from June 2018)

Paul and Sharon Barker
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a 350' front yard setback for the construction of a single family home located at 5045 Kraus Road.

DISCUSSION:

Deputy Town Attorney Steven Bengart said Mr. Jurek was able to reach out to Ms. Baker. Mr. Bengart spoke to her on the phone and received e-mails which include her approval to have Mr. Jurek act on her

behalf, and additionally, Mr. Jurek provided documentation from the Building Department showing that he is acting on behalf, as builder, for the permittees. Mr. Bengart e-mailed all the information to Mr. Callahan so he can place it in the file. Based on these factors Mr. Bengart is absolutely comfortable in accepting it, and suggested the Board move forward.

Motion by Jonathan Hickey, seconded by Ryan Mills, to re-open Appeal No. 3 under Old Business.

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

MOTION CARRIED.

DISCUSSION:

Mr. Jurek is proposing a 350' setback for property on Kraus Road to construct a single family residence. It is a 6000 square foot ranch home, Mr. Jurek has the plans and shows them to the Board members. Currently the residence to the north sits back a bit further than what is being proposed. There is a small cottage to the south that sits close to the road. A few properties down is another house that sits back equally as far as what the applicant is asking for. Mr. Jurek spoke with the adjacent homeowners and they have no issue with the request. There are three (3) neighbor notification forms on file.

Mr. Hickey asked why the applicant wants to build at the proposed location. Mr. Jurek said the sand filter system has to go in front of the house. Also, there is a natural clear area where the applicant would like to place the house, this will be minimal disruption to the existing trees in which they would only have to take down 3-4 trees. If the house was setback at 100' all the front trees would have to be removed. This will be the Barker's year-round personal residence. Mr. Hickey asked if the Barker's would consider anything closer to 100', he understands they are still in negotiations. Mr. Jurek said there are no negotiations, he went on to say that they manage the properties and the build-out, the Barkers are going to build regardless. Mr. Jurek does not know how close the Barkers would go to 100', he said there is probably 50'-75' leeway where they could go forward a little bit without taking out too many trees. Mr. Hickey asked if he will take out more trees at 275'-300' than you would at 350'. Mr. Jurek said not necessarily.

Mr. Jurek said the house plans have been finalized with the Town. Mr. Mills asked about additional landscaping. Mr. Jurek said they plan on extensive landscaping, Ms. Baker is a gardener.

Mr. Jurek said there was a previous variance granted for this same applicant on Greiner Road. They were going to demolish the house but their son moved into it and he ended up buying it. Mr. Jurek will start this project as soon as they get the building permit.

Mr. Krey said when he visited the property he saw deer eating. The setback preserves the rural nature of the property. It is consistent with a lot of the other houses in the area.

ACTION:

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

ON THE QUESTION:

Mr. Mills said this application can be distinguished from others based on the size of the subject parcel, the homes to the north and south having similar setbacks, the square footage of this residence as well as the finishes and materials utilized in the home.

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

MOTION CARRIED.

Appeal No. 8

Anthony Ricchiazzi & Rosanna DiSalvo
Residential Single Family

Requests relief from a previously approved condition of approval requiring the front yard setback of a proposed residential single-family home to be between 500' and 650' at 9075 Sesh Road.

Appeal No. 8 is in variance to Zoning Board of Appeals Meeting Minutes of September 13, 2011.

DISCUSSION:

Anthony Ricchiazzi and Rosanna DiSalvo are present. Mr. Ricchiazzi explained they would like to move the house from the 650' setback that was previously approved to be in line with the surrounding neighbor's homes which is about 100' from the road. Ms. DiSalvo said her dad will be building the house and someone from the Town provided him with a document showing the previously approved location, she went on to say it is very wet back there. They bought the lot in December 2017, the survey and the legal description was done giving the dimensions and the measurements of the lot. She called the Building Department who never mentioned the setback variance, they told her the setback was about 100' from the road. She had no indication that this variance existed. When they went to the Town to apply for the permit to start building is when they were notified of this issue. They do not want to build that far back, it is too far, it is too wet, it will be too costly to do what is necessary to build back there. They know it is possible to build that far back, they just prefer not to be. They want to be further upfront in-line with the neighbors on either side of them. They are getting married in October and were hoping to be already building by now. This does not make sense to her, she does not understand what the objection would be to move the house up.

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

Mr. Hickey asked for details of the financial impact if the house was built at 650' as opposed to 100'. Ms. DiSalvo said her dad was told by the engineer that it would be double the cost to place the house at 650'. It is very wet and they would have to back-fill it to make it level, it would cost more to bring lines down there plus the driveway would cost more, too. Mr. DiSalvo, of DiSalvo Construction, said they did some soil tests and the first 250' is good to build on. When he spoke with his engineer he was told that the cost would be three (3) times more than if built at 100' because it is wet back there and some of the soil needs to be removed and new soil would need to be added and a special foundation would need to be installed.. He said when they first purchased the land they called the Town and asked if they could build a single family home within 200' from the front line and within line of the other houses, and they were told yes. Now they find out they cannot do it.

Deputy Town Attorney Steven Bengart asked if they bought the house from Kit Burr, Ms. DiSalvo said no, they bought it from Patrick and Gina Cartenuto. There was no real estate agent when they purchased the land.

The square footage of the proposed home would be 2500' whether setback at 100' or 650'.

Mr. Hickey asked about environmental impacts and what the applicant needs to do to the property if built at 100' versus 650'. Mr. DiSalvo said the cost would increase regarding drainage for the lot and special pumps to get rid of the water. The water from the neighbor's property drains onto the back of the applicant's property, this is another issue.

Brian Burr, of 9065 Sesh Road, said in 2011 the reason the setback was so far is because it is the wetlands and the water impact on his home and his property, he was not thrilled with having a home built right next to him, that is why it was moved back initially. There have been two (2) previous owners and the ditches that they dug at this point are constantly filled. He has lived in his house for 44 years and because of the little bit of work that has been done to the property in question he has two (2) spots in his basement that already leak. He can't imagine it will get any better having a house sitting there pushing all the water to his side.

Frank Capodagli, of 9085 Sesh Road, said this is an attempt to pigeon-hole two (2) structures between his house and his neighbor's house, he does not want this to turn into a small disaster. Where is the water going to go? Deputy Town Attorney Steven Bengart said when it comes to the drainage issue the law is clear that additional water is not supposed to leave the property. The Engineering Department will be fully vetting that issue to make sure, no matter where this house goes, it is not supposed to make it any worse and they have to prove to the Engineering Department. This does not mean it solves existing water problems but it cannot make it any worse.

Mr. DiSalvo said he is building a house on Greiner Road, the Town of Clarence requires, before a permit is issued, a blueprint for drainage which has to be approved from the Town.

Mr. Ricchiazzi said the best way to relieve any water that is in the back is a retention pond, they plan on installing a pond, this will alleviate any existing water behind the neighbor's homes as well.

Mr. McNamara asked if and where there is a flood zone on the property. Mr. DiSalvo said the first 250' are clear. Mr. McNamara said if they built back 500'-650' they would have to do a LOMAR. Mr. Mills referred to the Grading Plan dated June 22, 2018 particularly the notation that has the proposed house elevations. The plan is on file. This shows that the house is about 4' higher than the floodzone.

A resident on the east side of the project site said if his house is 12" above the floodzone how can the proposed house right next door be 4' above the floodzone. He went on to say the area is one level swamp that is full of water all the time, if you dig a hole in the swamp, it's already full of water, it is not going to go anywhere else. The back of his property is mud for the first six (6) months of the year, he cannot cut the grass. It is a swamp from the property next to him and three (3) homes over.

Brian Burr said his uncle lives next to him and there was a house built next to his uncle's and since that new house was built his uncle had to have 50 loads of dirt put in his yard because of all the water the new house created and pushed to his uncle's property, he needs at least 50 more.

It is confirmed that the sellers never told the buyers that there was a variance in place for the property.

Mr. Mills asked if the applicants have had the opportunity to review the minutes from the original request. They have not. Mr. Mills asked if this variance is denied what the applicants would do. They do not want to incur the hardship and build that far back on the property, they would sell the property.

The applicant's will follow whatever the Town tells them to do about the drainage.

Chairman Michnik said the issue is that variance which was approved in 2011 goes with the property, it cannot be changed.

Mr. Ricchiazzi said prior to 2011 it was approved to be upfront, at 100', even with the two (2) neighbors there. Mr. Hickey asked when the applicants reviewed the prior variances. They looked at the variance before 2011 but they are unsure what date in time they did that, however they did not know about it before they closed on the parcel.

Mr. Capodagli said in 2011 there was no variance to build at 100', when they applied for it they applied for 700'. Mr. Capodagli asked if that meant the applicant could build anywhere from 0' to 700', at that time the board said if it is approved it is for anywhere between. That's when he objected and they all compromised and came to this solution.

Chairman Michnik asked what the setback is to build on that road. Mr. Callahan said if there are no other houses it is 45'-200'. But with the other houses within 500', they set the standard. Mr. Callahan went on to say that to build a drainage pond it will take significant engineering and there are required setbacks for it, he is not sure there is room on the parcel but wanted to make the applicants aware that this may be an issue.

Chairman Michnik suggested tabling the request to allow the Board more time to review it. He would like more background information on the original set of plans of the previous variance.

Deputy Town Attorney Steven Bengart reads, in part, the condition from the 2011 approval, "-neither the applicant nor any future owners will come back in front of the Zoning Board of Appeals for any other variance requests and acknowledge, by way of their agent, that the parcel located between 9035 Sesh Road and 9065 Sesh Road is a non-conforming building lot and will stay that way and no other variances will ever be requested pertaining to that parcel." He clarified that the Zoning Board of Appeals cannot make a recommendation on drainage. The board has the authority under limited circumstances to undo this but there are great ramifications in undoing it.

Mr. Hickey does not know what other information could be gathered other than if there is a sweet spot between the 500'-650' and the 100' that accomplishes what the applicant and the neighbors want. It appears that that the answer to that is no. Mr. Ricchiazzi said they will make accommodations to do whatever it takes, they just want to build. Mr. Hickey said "whatever it takes" is building at 500'-650' and cutting a check. Mr. Ricchiazzi said he is approved right now for 500'-650', a few hundred feet is not going to make a difference, it just won't. He went on to say that it would actually be better to build up front because there would be less disturbance that would cause water issues.

Mr. Hickey asked if the applicants can come back before the Board and ask for a specific number as opposed to what they are asking for currently which is relief from the previously approved request. Deputy Town Attorney Steven Bengart said yes they can come back but they will be faced with the same situation of the previously approved request, a decision by a prior board was made. It may be an option for the applicants to look into the cost of setting the house at different setbacks to see if it is feasible for them.

Mr. Hickey asked the applicants if they want to request the tabling of the request or do they want the Board to vote. The purpose of the tabling would be for the applicants to look into the cost. The applicants can also look into options for drainage. The applicants want to table their request.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara, to **table** Appeal No. 8 to allow the applicants to continue researching the cost of the project based on where it would be if relief was granted from the previously approved variance. The applicants should also look into additional drainage options, not only for the applicants but equally important for the surrounding properties, including but not limited to the properties represented tonight.

ON THE QUESTION:

Chairman Michnik said the Board needs to have numbers that are written, not talked about, he wants to see hard numbers when the applicants come back before the Board.

Deputy Town Attorney Steven Bengart handed a copy of the September 13, 2011 meeting minutes and motion to the applicants.

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

MOTION CARRIED.

Meeting adjourned at 9:45 p.m.

Carolyn Delgato
Senior Clerk Typist