

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday July 11, 2017
7:00 p.m.

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

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D'Amato	Patricia Burkard
Richard McNamara	Jonathan Hickey

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Christopher Greene

Motion by Richard McNamara, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 13, 2017, as written.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Abstain	David D'Amato	Aye
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 7:11 p.m. and the Zoning Board of Appeals meeting opened.

Other interested parties present:

David Clark	Steven Polvinen	Sandy Baker	Bob Baker
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Old Business

Appeal No. 4 (from June 2017)

David Clark
Residential Single Family

Requests the Board of Appeals approve and grant the non-climbable side of an existing fence to face inward at 6080 Railroad Street.

Appeal No. 4 is in variance to §101-3(1).

Patricia Burkard recused herself from this agenda item and left the dais. Mrs. Burkard noted that the reason for her recusal is because she was not at the previous meeting in which this item was originally heard.

DISCUSSION:

Mr. Clark notes there have been no updates.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **deny** Appeal No. 4 under Old Business.

ON THE QUESTION:

Mr. Hickey said he reviewed all the minutes of the last meeting and the documents submitted at that meeting. The law requires either a use variance or an area variance. Mr. Hickey believes this is an area variance. The analysis the Board has to look at is if the benefit to the applicant when compared to the detriment of the health, safety and welfare of the neighboring community weighs in the applicant's favor. This burden of proof is on the applicant. There are five (5) factors the Board looks at when reviewing a variance. The first is whether or not there would be an undesirable change to the character of the neighborhood, will there be a detriment to the nearby properties? In this case there would be. The second thing that needs to be looked at is if the applicant can achieve being in compliance in a feasible way, fixing the fence would be a feasible way to come into compliance other than this Board granting a variance. The whole fence is out of compliance therefore the request is substantial. The fourth factor to be considered is if there will be an adverse impact on the physical environmental conditions of the neighborhood. While there is no environmental impact the real risk is that there would be an adverse physical impact on the subject property not to mention the neighborhood as a whole. The last factor is whether or not the issue is self-created, it is. To the extent that this could be looked at as a use variance, there are certain criterion to be looked at as well, but Mr. Hickey feels this is an area variance. With regards to the criteria for the use variance Mr. Clark has failed to meet his initial burden of proof demonstrating with sufficient evidence entitlement to what is being requested.

Mr. Mills agreed with Mr. Hickey in that this request falls under the category of an area variance but in the instance that the argument was framed that this could also be construed as a use variance, Mr. Mills will set forth the appropriate criteria. First prong is whether a reasonable rate of return can be achieved and the lack of return must be shown by competent financial evidence. Mr. Mills said there has not been any evidence that the applicant cannot realize a reasonable return. The second prong is the hardship is unique and does not apply to a substantial portion of the district or neighborhood. The evidence has showed that the hardship is unique and does not apply to the substantial portion of the neighborhood, fences are throughout the neighborhood. Third, the variance will not alter the essential character of the neighborhood. Mr. Mills said the fence will impact the character of the neighborhood based upon the evidence of fences in the area and from what the Board has seen after driving through the neighborhood. The final prong is whether the hardship has been self-created, the evidence shows that it has been.

Mr. D'Amato, Mr. McNamara and Chairman Michnik agree with the statements made by Mr. Hickey and Mr. Mills.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Abstain	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED.

Patricia Burkard returned to the dais.

New Business

Appeal No. 1

Steve and Nelma Polvinen
Residential Single-Family

Requests the Board of Appeals approve and grant a 630 square foot variance to allow for a 1,590 square foot attached accessory structure at 4700 Sawmill Road.

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

DISCUSSION:

Mr. Polvinen is present and explained he moved into the house about a year ago. He has a lot of power tools like ban saws and table saws in storage. With the three (3) garages the way they are he cannot fit his vehicles in the garage. He would like the handicap ramp to remain. The roof of the proposed structure would be exactly the same, the roofline will follow the house. The back line of the addition would be to the back line of the house. Mr. Polvinen will be siding the house in the near future so when the new structure is put up the same siding will be used so it will match. He referred to the renderings and said he would like a door on the back so the lawnmower and lawn equipment can come out the back. There will be no business operated out of the proposed structure, it is for Mr. Polvinen's personal workshop use only. He would like to be able to bring something into the workshop to work on it as opposed to running back and forth for tools when he is working on something. He spoke with all his neighbors and they are all ok with his proposal. There are seven (7) neighbor notification forms on file.

Mr. McNamara asked if the 66' section on the survey labeled Former Sawmill Road R.O.W. is a private easement and if it is will the addition go into the easement. Mr. Polvinen explained that the 66' section allows the owner of 4694 Sawmill Road access to his property, it is his driveway.

Mr. Mills asked if the applicant can get away with any smaller size than what is being proposed. Mr. Polvinen went on to explain that the proposed structure is oddly shaped, he calculated for storage of equipment and space needed for projects to be worked on and this is what he came up with. He confirmed that the roofing material and the siding will be the same as the house. The square footage of the principle structure is approximately 2200.

Mrs. Burkard is concerned with what the proposed structure will look like. She noted that it sits far back from the road so it won't be really visible from the road. If the first garage is covered up with siding it may balance the look. Mrs. Burkard said it seems there is more garage than house.

Mr. Polvinen would like to get the header in before winter. He will close up the first bay and make it look like it is part of the house and would continue with three (3) garage doors down the structure.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 1, as written with the condition that the currently existing first garage bay, closest to the principle residence of the house adjacent to the kitchen, be closed up in either vinyl or brick to match the existing house. The addition will constitute the third garage bay. The applicant agreed there would only be three (3) garage doors.

ON THE QUESTION:

Mr. Mills said the testimony and evidence, including the photographs and the walk out at the sight, shows that this is a large and well protected area, being protected by a lot of foliage. There does not seem to be a lot of different views from different neighbors that this would impact.

Richard McNamara Aye
David D'Amato Aye
Daniel Michnik Aye

Patricia Burkard Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting adjourned at 7:49 p.m.

Carolyn Delgato
Senior Clerk Typist