

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday July 14, 2020
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
Patrick Krey	Raymond Skaine

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart

Motion by Ryan Mills, seconded by Richard McNamara, to **approve** the minutes of the meeting held on, March 10, 2020 as written.

Raymond Skaine	Abstain	Patrick Krey	Abstain	Richard McNamara	Aye
Patricia Burkard	Abstain	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 7:06 p.m. and the Zoning Board of Appeals meeting opened.

Other interested parties present:

Barry Small	Scott Roetzer	Krystin Roetzer	Greg Milbrandt
Daniel Thompson	John Wassink	Troy Wassink	Carol Denall

Appeal No. 1

Tommy Aranyosi
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 20' variance to allow a 5' rear yard setback for the construction of a detached accessory structure (garage) located at 8721 Hearthstone Drive.

Appeal No. 1 is in variance to §229-44(F)(3).

DISCUSSION:

Appeal No. 1 is withdrawn at the request of the applicant.

Appeal No. 2

Scott Roetzer
Residential Single Family

Requests the Board of Appeals approve and grant a 6’ variance to allow up to a 22’ tall detached accessory structure located at 5745 Rolling Creek Lane.

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

*Applicant previously received variance on 12/10/19 for the square footage of the accessory structure.

DISCUSSION:

Neighbor notification forms from 5462, 5522, and 5482 Rolling Creek Lane are on file. Barry Small is present and stated that he is looking for a 6’ height variance for a barn. Scott Roetzer owns the property, he and Mr. Small are business partners. Mr. Small resides at 5081 Anfield Rd.

Mr. Skaine asked what the height of the neighbor’s structure is, Mr. Small said it is higher than what he is proposing.

Mrs. Burkard asked why he needs the 6’. Mr. Roetzer replied he would like to pull either his truck or his boat (which he hopes to obtain in the future) into the barn.

Mr. Roetzer said he does not plan to utilize the structure to operate his business from, and has no problem if that was made a condition of the variance. The same materials that were used for the house will be used for the barn which includes brick, wainscoting, siding and shingles.

ACTION:

Motion by Raymond Skaine, seconded by Patricia Burkard, to **approve** Appeal No. 2 with the following conditions:

- there will be no business operated from the structure.
- conforms to the same specifications as the house.

ON THE QUESTION:

Mr. Roetzer agreed with the conditions.

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

MOTION CARRIED.

Appeal No. 3

Gregory Milbrandt
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 280 square foot variance to construct a 400 square foot addition to an existing detached residential accessory structure located at 9240 Clarence Center Road.

Appeal No. 3 is in variance to §229-66.

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

DISCUSSION:

Neighbor notification forms from 9230 and 9235 Clarence Center Road are on file.

Greg Milbrandt is present and said he is looking to add 20' on to the back of his garage, it will be the exact same shape as it is now just longer. It will be sided.

Mr. McNamara asked why Mr. Milbrandt needs the variance. Mr. Milbrandt said he has a lot of junk, he confirmed that no business will be run out of the structure. Mr. McNamara also inquired about the current storage container already on the property. Mr. Milbrandt said it was used for hay storage many years ago, he'd eventually like to remove the container.

Mr. Krey asked Mr. Milbrandt if he would be amenable to a condition of the request that the same siding be used for the new structure as that of the house and garage. Mr. Milbrandt said yes.

Mr. Skaine asked Mr. Milbrandt if the structure would be going north on his property. Mr. Milbrandt said yes.

Chairman Michnik asked if a condition was made that the existing container be removed when he gets the permit to build the structure or after the building is complete, would he be able to do that. Mr. Milbrandt said yes, but not right away. Chairman Michnik said it would be a condition of the approval, which is why he asked. Mr. Milbrandt stated that due to his current health condition, it may not be feasible for him to get that done. His main concern at the moment is to get the new structure built, he will build it himself. Chairman Michnik stated that he understands the circumstances, but wants to make sure that all facets of the project are put together, so that the project is good for everyone involved. Mr. Milbrandt stated that the container in question has been there for over 25 years, and there has never been a problem with it. Chairman Michnik said that Mr. Milbrandt is requesting the Town do something for him by granting this variance, now he is saying the Town may ask Mr. Milbrandt to do something for the Town by removing that existing structure. Mr. Skaine suggested the time limit of a year be put on the removal of the structure given the health condition of the applicant. Mr. Milbrandt's lot is 1100 feet deep. He also stated that there are several buildings in town on much smaller lots, with bigger structures, he can provide a list of addresses if the Board wishes. Chairman Michnik said the applicant can send that list to Mr. Callahan.

Chairman Michnik said if he were to make a motion, he would put a time frame on the removal of the old container.

Mr. Mills asked Mr. Milbrandt what he thinks is a sufficient timeframe for him to have the container in question removed. Mr. Milbrandt said by this time next year. Mr. McNamara suggested July 1, 2021 would be enough time, Mr. Milbrandt agreed.

ACTION:

Motion by Patrick Krey, seconded by Raymond Skaine, to **approve** Appeal No. 3 with the following conditions:

- The siding on the new structure will match the siding on the existing garage.

-The existing storage bin will be removed by July 1, 2021.

Patrick Krey	Aye	Raymond Skaine	Aye	Richard McNamara	Aye
Ryan Mills	Aye	Daniel Michnik	Abstain		

MOTION CARRIED.

Appeal No. 4

Daniel C. Thompson
Residential Single Family

Requests the Board of Appeals approve and grant:
A.) A 7' variance to allow a 5.5' side yard setback for an addition to the principle structure.
B.) A 3' variance to allow a 12' front overhead garage door.
C.) A 3' variance to allow a 12' rear overhead garage door.

All requests apply to 6210 Herr Road.

Appeal No. 4 is in variance to A) §229-52 (B),
B) and C) §220-55(I).

DISCUSSION:

There are no neighbor notification forms because the Town owns property on all sides of the applicant's. The property was owned by Mr. Thompson's father, who sold it to the Town years ago. Mr. Thompson said he is building an attached garage/barn to store his RV, van, cars and storage. The conversion van doesn't fit in the regular garage, so he would like to store it in the new structure with the RV.

Mrs. Burkard asked if the siding and materials will match the current materials on the house. Mr. Thompson stated that they'd like the front of the new structure to match the front of the house as much as possible. Any stone used for the new structure will also match that of the existing house. There will be a back garage door as well.

Mr. Skaine commented that he is appreciative of Mr. Thompson's plans to build north on his property, and as a fellow RV owner, can understand the desire to house the RV. Mr. Thompson stated that he believes having the RV in a barn is better than having it in the driveway.

Mr. McNamara commented that it's a very large addition, pointing out the balcony and that it appears as though there may be living quarters up there also. Mr. Thompson said they started with plans, and there had been discussion of building a porch, but that was changed to a balcony to overlook the pool and the backyard. There are no intentions for living in the new barn. Discussion regarding the garage door out the back, for driving the RV or van back out that way.

Mr. Thompson confirmed with Mr. Mills that he won't be running any business out of this barn. Mr. Mills said there won't be any problem if that is made a condition of the approval for the variance, as well as living space, to which Mr. Thompson also agreed. Discussion continued regarding the façade of the barn matching that of the house. Mr. Thompson stated that his plan is to have it match exactly, or as close as possible. Mr. Mills asked if there were any other ways of building the addition so that the side yard variance isn't necessary. Mr. Thompson stated that with the RV being parked along the one side, it would be too small without the side yard variance.

Mr. Mills asked what the overall square footage of Mr. Thompson's home is, to which Mr. Thompson said that his home is 2800 sq. ft. Mr. Mills said that the structure, with first and second floors, will be just under 3,000 sq. ft. First floor garage entry is 1966 sq ft., for the record, reading from plan A-100 dated April 17, 2020. Also, second floor loft including storage, at 971sq. ft. Mr. Thompson stated that this is the plan they are starting with, and after he got some cost estimates, they turned out to be higher than his budget will allow. Therefore they are not going to do quite as much on the inside as originally planned.

Mr. Michnik stated that since this has been brought to the committee for approval, it doesn't make sense to not have the true plans available for review. Mr. Thompson stated that the footprint is the same, but what they're going to do on the inside, and what they want to do on the outside as far as windows, roofing, etc. will be reduced due to cost. The footprint is what he is sticking to, as far as measurements, and won't change because of what he'll need to fit in there. Mr. Michnik stated that the part that they're looking at for approval is the whole package, including exterior. His concern is that the plan they're looking at that was presented, may change from what they approve. Something that may not otherwise be approved, because it would change the whole exterior look of the addition. Mr. Thompson said he does understand the concern, and that he can state with a high level of confidence that the windows, the size, roof height, won't change. The part that may change is on the left hand side, is the porch covering, or there may not be a porch at all. Mr. Michnik asked what would happen if Mr. Thompson decides to not put in a porch at all? Discussion continued regarding the possibility of plans changing with the removal of the balcony or porch. One side is longer than the other, the new balcony is just in a nook in the backside, so there could potentially be an 8 ft. difference, but he believes they're pretty solid in the sq. footage.

He got the architect to draw everything up, and he is currently going through the prints. He didn't want to take it too far until he got the variance. Mr. Michnik pointed out that the pricing could also determine the exterior materials. Discussion continued regarding making sure the addition is aesthetically pleasing, and matching the house.

Mr. McNamara asked what type of construction this will be, Mr. Thompson replied that it will be a Pole Barn

Mrs. Burkard asked if the addition will look like what is presented in the plans, but that the only thing that may possibly change is the rear view, to which Mr. Thompson agreed. The front, which everyone will see, will look like what is presented in the plans. Mrs. Burkard asked if it came down to cost, whether the entire back side would change as far as doors, windows, etc. and make it just a Pole Barn. Mr. Thompson stated that there would still be windows, as it's the only place the natural light comes through, and they are utilizing the barn for pool storage also, so there would still be a door, in order to gain access from the backyard / pool area. Mr. Thompson said they are pretty committed to the porch, because they'd like some shade back by the pool. Upon question, Mr. Thompson stated his total lot size is 150x390, and that the town also owns the property right behind him as well. There is a 200ft. buffer with the town, there can be no buildings or structures built within 200 ft. of their property, on all three sides. This also includes roadways, driveways, and no parking areas, to be located within the buffer zone.

ACTION:

Motion by Mr. Mills to **approve** Appeal No. 4 seconded by Mr. McNamara with the following conditions:

1. No business will be occupied or conducted out of this additional structure

2. There will be no permanent or temporary living spaces inside this additional structure
3. The applicant uses on the front façade of the building, materials that match and are consistent with the house. This includes vinyl siding and 2 ½ - 3 ft. of stone at the base level, which will be consistent with the stone already at the front façade of the house.

Mr. Thompson asked what is defined as living space, Mr. Bengart responded that it means nobody can sleep in there, whether it be temporary or overnight, certainly no rental of it via Air BNB, VRBO, or any other places, family or no family. Mr. Thompson agreed, and stated he had no plans to do that. The concern is that it not turn in to a rental unit. In the plans there is a bathroom space shown, but Mr. Thompson said that has been cut out. Mr. Mills stated that if Mr. Thompson wishes to add that in the future, he will need to come back to the town for approval. Mrs. Burkard stated that the widow in the front would stay the same. The front elevation would stay the same as depicted in the plans presented.

Mr. Mills asked if there is still vinyl siding that matches the home available, Mr. Thompson said he is unsure. The house was built in 2001, so he should be able to find something that matches very, very closely.

Mr. Mills again moved to approve Appeal No. 4 with the following conditions:

1. No business will be occupied or conducted out of this additional structure
2. There will be no permanent or temporary living spaces inside this additional structure
3. The applicant keeps the front of the elevation consistent with what he has shown in drawing A-100, marked Exhibit A, which includes vinyl siding and 2 ½ - 3 ft. of stone from the ground up, which will be consistent with the stone already at the front façade of the house.

Mr. Michnik asked Mr. McNamara if he was still good with the conditions set forth. Mr. McNamara agrees with the clarifications and seconds the motion.

ON THE QUESTION:

Mr. Thompson understands and agrees to all of the aforementioned conditions. Mr. Mills stated that this is a larger variance request than they often see, but it is mitigated by the fact that the town owns the surrounding property, and there are no other neighbors directly affected.

Raymond Skaine	Aye	Patrick Krey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED

Appeal No. 5

Tracy and John Wassink
Residential Single Family

Requests the Board of Appeals approve and grant a 450 square foot variance to allow a 450 square foot addition to an existing detached accessory structure located at 9001 Fairways Circle.

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

DISCUSSION:

Mr. Wassink spoke and stated that during the COVID quarantine he had a couple of weeks off of work, he has rentals that he takes care of as well as his own property. He was in need of some additional storage for the equipment that he uses, so he built a structure.

Mr. Michnik stated there are neighbor notifications from 9025 Fairways Circle and 4990 Hillside Dr. are on file.

Mr. Wassink confirmed that the purpose for building the structure was to keep the property looking well, and to cover and protect the equipment. He knew things were shut down, and needed he to be productive.

Mr. McNamara asked whether Mr. Wassink obtained a Building Permit or even attempted to contact the Building Department before going ahead and building the structure. Mr. Wassink stated that yes he knew he needed a permit, but did not make any attempts to obtain one, including contacting the proper department.

On May 19th Mr. Wassink was issued the Stop Order, and stated that the only thing he did after that was to put a tarp over it to protect it from any potential water damage. He has no plans to enclose the structure. He did not use an architect, nor an engineer, and there was no previous inspection for depth, etc. Mr. Wassink stated that it is over 42" deep, but that there is no documentation or photos

Mrs. Burkard referred to Mr. Wassink's notes in regards to keeping his equipment in good condition, and how it will be kept in good condition if it's all open, and nothing to protect it aside from the top of the structure. She asked about keeping it tidy, she feels that the neighbors would have an issue with that, as everything is out in the open. Mr. Wassink stated that it's enclosed on one side by a fence, the back is a barn and foliage, so one side is exposed. Mr. Wassink stated that if enclosing it would take care of that, he would be willing to do that.

Mr. McNamara asked if the soil that Mr. Wassink took from the berm will remain, to which Mr. Wassink replied that as of now, yes. Mr. Wassink stated that there were a few dead trees right on the property line that he removed, which caused his neighbor concern that the whole area was going to be cleared. Mr. Wassink stated that he cleared 3 or 4 dead trees away, but did plant 5 new pine trees. His neighbor was very happy with that.

Mr. Wassink explained that the tarp is temporary, and that there is plywood that he didn't get to use due to the stopping work order. He stated that his business is taking care of rentals, and upon question, that the size of the structure is 22'6"x20. The project was started the beginning of May, possibly May 1st. Mr. Wassink stated he has lived in the house approximately 4-5 years. He never had a definite plan as far the structure itself. He knew that he needed more roof covering, but was unsure as to how to proceed.

Mr. Mills asked if at this point of the process, does Mr. Wassink plan to get all of the necessary architectural drawings, to which Mr. Wassink responded yes. He plans to take the tarp off and finish the roof, he would use aluminum wrap. He hadn't planned on pouring a pad, unless the committee requires him to do so. He had no other plans for finishing the inside, aside from using the rafters to store boards and similar items. Mr. Wassink stated that aside from one friend assisting him, he did all of the work himself, out of pocket cost with labor (he paid his friend) has been approximately \$5,000.

Mr. Skaine asked what the setback is, Mr. Wassink replied it is around 13-15 ft. . There appears to be an excess of dead trees behind his property, Mr. Skaine inquired where they come from. Mr. Wassink stated

that a lot of them come from people in the neighborhood, or from the properties that he cares for. None of them are from this property.

The berm in the back of Mr. Wassink's property is right on the border, Mr. Wassink stated that the neighbor is in favor of it. For the record, the neighbor in question is Mr. Ballard. Mr. Wassink confirmed yes.

Referencing the photos, there was discussion regarding all of the firewood and other materials on his property, and that it needs to be kept neat, not scattered. Mr. Wassink stated that the photos were taken during construction, and it no longer looks like that.

Carol Denall at 9025 Fairways Circle to the left of the Wassink's (looking at the house), spoke in Mr. Wassink's favor, stating they are great neighbors, he's done a great job, that there are more dead trees that could probably also be taken down. Upon question, she stated that she can see part of the extension of the new structure. The fence helps to deflect it, so that she doesn't have full view of the structure.

Mr. Mills read in to the record correspondence from James Ballard dated May 5, 2020 to Paul Gross and the Town of Clarence referencing the property behind him at 9001 Fairways Circle. He stated that the construction project has been going on for well over a year between the driveway from front to back and the large storage unit going up. To clarify, the letter itself is not from Mr. Ballard, it is an internal memo that is drawn out when a complaint is made to the town, and it states what the complaint stated. Mr. Ballard did make the complaint, but the letter itself is not from Mr. Ballard. An internal memo to Mr. Gross as a result of a phone message.

No additional questions, Mr. Michnik explained that they can approve, deny, or table the request.

ACTION:

After two requests for a motion, there was no action therefore the Appeal fails and the request is denied.

ON THE QUESTION:

Meeting adjourned at 8:18 motion by Raymond Skaine, second by Richard McNamara

Raymond Skaine	Aye	Patrick Krey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye	Daniel Michnik	Aye

This meeting will be taped.