

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday July 9, 2019  
7:00 p.m.

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

Zoning Board of Appeals members present:

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

Town Officials present:

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

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on June 11, 2019, as written, with the following amendments:

- Regarding the action for Appeal No. 1 under New Business, Andrea Minor/9500 Clarence Center Road, the member who seconded the motion is amended to correctly reflect Patrick Krey. Patrick Krey also voted "Aye" when roll was called.
- The spelling of Patricia Burkard's name is corrected from Burkhard to Burkard.

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

MOTION CARRIED.

Other interested parties present:

Jillian Smith	Bracken Brainard	Timothy Heineck	Dominic Piestrak
John Streer	Michael Kohrer	William King	Sandra King
Daniel Stripp	Joseph Melluso	John Miosi	Derek Landri
John Locurcio	Joel Berger		

### Old Business

**Appeal No. 1**

Bracken Brainard  
Residential Single Family

Requests the Board of Appeals approve and grant  
1.) A 196 square foot variance to allow a 196 square foot addition to an existing detached accessory structure.

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

All requests apply to 5171 Glenwood Drive.

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

## **DISCUSSION:**

Last time they were in, updated information was requested. Mr. Brainard stated that he was submitting the same form from last time, as well as the new doctor's script from Ava's MD that was given 10 days after the last meeting. He apologizes for not being able to make the last meeting, he did reach out to Jim, hopes the letter was received. For the record, the letter from the Physical Therapist Jean Kovach as 'Exhibit A' and a letter from Dr. Mark Klocke as 'Exhibit B'. Exhibit B was read in to the record: "For Patient ID Ava Brainard DOB 5/31/10 from Sunrise Pediatric and Adolescent Medicine, located in Amherst NY, dated May 22, 2019. To Whom it May Concern; Ava Brainard was seen in my office on 5/22/2019 for a physical exam under instructions, restrictions, necessary medications if any. It is noted that Ava has had chickens at home for almost one year and has benefitted from them both physically for her increased activity, and emotionally for caring for another human being. She suffers from Cerebral Palsy and has adjusted fantastically to her disability in some respect due to caring for the chickens. It is widely documented that animals can be very therapeutic in helping children adjust to their disabilities. Thank you, signed Mark Klocke, MD."

Additional updates, Mr. Brainard stated that within the last two months since they left here, because of the letter that their neighbor had submitted, it was very hurtful so he called the District Attorney's office, and during their investigation, the AG's office does not believe Mr. Longo wrote the letter, because he did not sign the letter. The letter was sent from a domain that was at home while he was at work, so he couldn't have done it. Kelly Longo, the wife, the person who initially initiated this complaint, said that she called the town and wanted to reverse the complaint. She said she realized she loved chickens, she has no problem with the chickens, and if it would help, she would put a chicken coop up on her yard. Jim Callahan confirmed that Mrs. Longo did indeed say all of that. He had asked her to put it into writing, but he hasn't received that from her yet. Jillian Smith stated that she and Mrs. Longo talked, and Mrs. Longo apologized. She admitted that going after their chickens really had nothing to do with chickens, she loves animals. It had more to do with going after Bracken and herself over hard feelings in the neighborhood. She'd like to resolve that and move on. With the neighborhood everyone is moving on and the kids are playing, her kid was in their backyard. There's a more positive environment within the neighborhood.

One of the issues that Mr. Michnik has is the upkeep and how it will be monitored from the town's point of view. How will we know when one chicken expires, a new one doesn't arrive. Mr. Brainard stated that they can't add chickens to the group, when one dies it's not replaced with a new one, they are not a chicken farm.

Mr. Michnik asked if there's any indication regarding their daughter's age and the time limit for keeping the chickens, some possible conditions to include in the variance. Mr. Mills said one of the conditions was that there will be no new chickens added. Also discussed the limitation in terms of time, possibly discussed age 12 obviously there could be some give and take potentially in that. Mr. Brainard asked if when his

daughter turns 12 they're going to take an animal away that she's had for years. He prefers when the chicken expires, the chicken expires. He doesn't want to have the day come where he has to tell his daughter that the chickens have to leave. These chickens were solely for his daughter for her disability, it's not a venture in to farming. Mr. Mills appreciates and understands that it could be a hard time trying to do that, and asked how long the chickens typically live. Mr. Brainard stated that six years old is a long time, that typically they stop laying eggs around five years old. Often farmers will take care of the chickens themselves once that starts happening, but Mr. Brainard stated that they would need a reason to make that happen, they wouldn't just do it. Currently all of the chickens are the same age, one year old. Mr. Mills asked if seven years is the max, to which Mr. Brainard said absolutely. Jillian Smith said that is why they make you buy no less than six at the store, because they grow together.

John Hickey asked to see the letter, asked how long Dr. Klocke has been seeing Ava, to which Mr. Brainard replied he's been treating her since she was born premature, every checkup since day one. Mr. Hickey asked how they got this idea. Mr. Brainard stated that Ava was visiting a neighbor up the street who has chickens, and their chickens are a little more open than theirs are, a little more free range. When the mother brought Ava home, she explained to Ava's parent's how much Ava enjoyed the chickens, that maybe they should consider getting her some for herself. So they went to Central Tractor and purchased six chickens. Mr. Brainard stated that one of the largest physical benefits Ava has experienced has been responsibility. She realizes that everything has a place, things take time. It's calming for her, whether she's upset, overly excited, everything about her is calmer. She is in regular classes at school, sees a physical therapist, and her schoolwork has improved all around since they acquired the chickens as well. Her attitude has improved, even her teachers have noticed it.

Mr. Hickey asked if Ava sees Dr. Klocke on any type of regular basis for her ongoing medical conditions, or does she just go for regular well visits? Ms. Smith stated that well and sick, like when she needed to get her braces on and for physical therapy, they bring in the special doctors to school. Also, reiterated that they're ok with any conditions that come with the chicken's eggs, they don't hand them out, sell them. Mr. Brainard stated they eat the eggs, and they give them to family when they come over.

Mr. Hickey requested a refresher on the neighbor issue. Considering the Longo's have recanted and no longer have an issue, were there any other public displays of neighbor objections to the chickens? Mr. Brainard stated that he went down four houses on his side of the street, and three houses across the street to get letters and signatures, as well as the church behind him. When asked how long they've lived on the property, Mr. Brainard stated that his mom originally owned the property in 2002, then they bought the property four years ago. Ava was born in Cheektowaga, has lived full time in this residence for four years.

Mrs. Burkard asked about the quarterly inspections that had been mentioned previously. Deputy Town Attorney Steve Bengart stated that the town would most likely do that, they would need to figure out which department it would be handling it. He's not sure anyone would actually perform the inspections, but the conditions included the parties being open to inspections on a quarterly basis, which he believes they agreed to. It would be up to this board to create the condition. Mr. Brainard stated he'd be ok with quarterly inspections, Deputy Town Attorney Steve Bengart said that the point of the inspections would be to check that they are properly disposing of the excrement, that the chickens aren't free ranging, that the structure would be brought to code. Mr. Brainard stated that his issue is that his tax dollars are going for an official to come out to inspect his place when they're not going down the street to inspect that house. Deputy Town Attorney Steve Bengart stated that they don't have the right to just walk through people's backyards, Mr. Brainard said you don't have to, you can just "drive through Clarence and see chickens" he said that he has

more problems with the park at the end of his dead end street and the tax dollars not going in to enforcing the signs that are up regarding parking, dogs, etc.

Mrs. Burkard asked about the structure that the chickens live in, confirming there is a fence around the coop and the chickens don't and won't freely roam around. Mr. Brainard confirmed this, and agreed that it is ok if it's a condition that they can't roam the yard. When asked about the addition, Mr. Brainard stated that they've met with Joe and Dave, they've been out to the house, they've had two sets of architectural drawings done, which they submitted. An agreement has been made as to what needs to be done, and before they did any work they had to make sure everything was approved by the town, which it has been.

Mr. Michnik asked the town attorney if the Health Department would get involved in this for the inspections, or any agency that may. Mr. Bengart stated that just having that the Town of Clarence has the ability to come out and perform an inspection. The Department of Agriculture won't because it's a residential area. Mr. Michnik asked the town needs to sign a release giving the community enforcement officer permission to inspect the area. Mr. Bengart stated that no, it will be one of the conditions of the agreement. If they don't agree to that, then it is up to this board as to whether or not they want to go forth. The applicants have said repeatedly that they will cooperate. Mr. Michnik referenced parking at the end of the street – it was asked as to whether the two spots there at the end are designated for park parking, to which Mr. Brainard stated that no, the signs state that park parking is on Greiner Rd., also no glass containers or pets. That all day long there are pets and dogs, couple of large dogs that walk through there every day, or when the dog is out of treats and sees a bunny run through their yard and chases it. Mr. Michnik stated he'd only inquired about the parking spots.

#### **ACTION:**

Motion by Patricia Burkard that they approve under Old Business, Appeal No. 1 with the following conditions:

1. The current addition of the shed be rebuilt to meet all codes.
2. Approval for only the six chickens currently on the property.
3. No rooster.
4. Feed will be stored in closed containers.
5. Waste disposed properly and in a timely manner.
6. No chickens will be roaming in the yard.
7. Eggs for family use only.
8. Resident will allow quarterly inspections by the Town of Clarence, or any other agency that may have jurisdiction.

Mr. Brainard said that from what he has heard, in both the towns they do allow chickens, so if there was a problem, they have a chicken advocate, which they have reached out to. He stated that in Amherst if there was a problem, they call Animal Control.

Motion Seconded by Ryan Mills.

#### **ON THE QUESTION:**

Deputy Town Attorney Steve Bengart asked that the applicant agrees to the conditions as stated, to which Mr. Brainard said they both understand and agree. Mr. Mills would also like to add on the question that

they have been presented with a very unique set of circumstances here, they do have medical documentation by way of Exhibit A and Exhibit B demonstrating that both medically from the physical therapist and a medical doctor, that the chickens will greatly benefit this young girl. The evidence demonstrates that the situation is quite unique compared to other situations that may have been presented to them in the past. Mr. Hickey said he is very persuaded by Dr. Klocke and his history of care and treatment of their daughter. He believes they have demonstrated a clear piece of evidence to make it clear that if they were not granted this variance they would suffer unnecessary hardships but specifically their daughter's progress and her apparent thriving under her circumstances. It isn't about financial turnaround, the variance won't affect the essential character of the neighborhood. The medical proof in this particular case would distinguish it potentially from any other case.

Deputy Town Attorney Steve Bengart said if there were to be a sale of this property for any reason, that this variance and the conditions are solely for this owner. Mr. Brainard stated they have no plans on leaving or selling their property. This condition was added to the list with the Motion.

Chairman Daniel Michnik - Abstain  
 Patricia Burkard - Aye  
 Jonathan Hickey - Aye

Vice-Chairman Ryan Mills - Aye  
 Richard McNamara - Aye  
 Patrick Krey

MOTION CARRIED.

Mr. Brainard and Ms. Smith thanked the Board, apologized for any troubles and hard times.

**Appeal No. 6** (from June 2019)

Timothy Heineck  
 Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow a ground mounted solar photovoltaic system on a Traditional Neighborhood District parcel less than five (5) acres in size at 9300 Clarence Center Road.

Appeal No. 6 is in variance to §184-6(B)(1).

Neighbor notifications 9280 and 9320 Clarence Center Road are the two neighbor notifications that the board has received.

Devin Mannis with Solcius, the contractor installing the solar system stated his name for the record. He presented all of the plans, which are basically 12 panels, 3.66 kW. Standard, ground level system. They have not done any ground level systems in Clarence as of yet, but they have in the surrounding jurisdictions. Mr. Mannis stated that they are licensed to do all of their electrical work. He was asked whether he has approval or anything in writing stating that he is representing them. He stated that he does not currently on him at that moment. That when he came in to apply for the permit, he was told that this was the time of the meeting, he came in as a representative for the contractor so that he could try to move things forward. Mr. Mannis works for the contractor and he only handed in permits and has been working with the Building Department.

Mr. Michnik referred to Mr. Bengart, Mr. Callahan stated that the town has no communication, nothing from the homeowner. Mr. Mannis stated that he has had no contact himself with the applicant at this point. He has been to the Building Department, went over the plans with them. They told him the process for

applying for a zoning variance. He then went to the Zoning Department filled out the application, paid the fee, and is here tonight.

Notification that the homeowner has agreed to representation is necessary in order to act on this variance. Mr. Mannis only has the first page of the application with him, he is hard pressed to think of anything that would prove he is representing the homeowner, but he is representing the contractor who is doing the work. He doesn't normally have any contact with the homeowner himself, he just gets the permits. This is the first time this particular system is being done in Clarence, he asked if there's a formal application that he can get filled out and signed by the homeowner? Mr. Bengart stated that they need an official, notarized document stating that the homeowner has agreed to representation by either Mr. Mannis or the contractor to act on their behalf. Mr. Mannis asked if he gets the proper documentation and reappears next month, if they can then proceed. Mr. Michnik stated that then they can talk about the project at the next meeting if he gets the proper documentation. Mr. Mannis asked what else would need to be completed prior to the next Zoning Board of Appeals meeting and was told that the property still needs to be staked, preferably the Wednesday before the next meeting. Mr. Mannis was also told that he would need to explain why a variance was being requested and answered that he did not know what the laws are in Clarence regarding ground mounted systems. He asked if there have been any ground mounted systems put in Clarence. Mr. Mannis was told he needed to look up the law or send someone to the next meeting who knew the law. Mr. Callahan stated that the law states that you need a minimum of 5 acres in this zone. He asked if he needs a new site survey that shows 5 acres. This property is less than 5 acres and that is why the variance is being requested. They recommended that he gets as much information as possible, including the notarized letter from the property owner and pictures of what the project will look like.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Richard McNamara, to **table**, Appeal No. 6 in order to give Mr. Mannis the opportunity to obtain the information requested, a notarized letter from the homeowner, plans of the project, staking of the project, cost savings and other information requested by the Board.

#### **ON THE QUESTION:**

They would save about \$16,000 and Mr. Mannis was not sure if this project has any subsidies. He was asked to see how much the homeowner would save on a monthly basis.

He will be coming back and will provide a letter stated that he and/or the contractor can act as a representative for the homeowner. He also needs to stake completely and provide any other information that the Board has requested. It was asked why the homeowner was not present and Mr. Mannis stated that they usually take care of everything for the permit process to save the homeowner from the hassle and provide a smooth process. It was mentioned that if the homeowner could attend the next meeting that it might be a good idea for they to be present.

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

**MOTION CARRIED.**

## New Business

### Appeal No. 1

John & Theresa Streer  
Residential Single Family

Requests the Board of Appeals approve and grant a 5.5' variance to allow a 4.5' side yard setback for the placement of a detached accessory structure (emergency generator) located at 5491 Firefly Court.

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

### **DISCUSSION:**

Neighbor notification is on file for 6649 Ferncrest Unit B and 5484 Firefly Court. Mr. John Streer spoke and stated that he has lived at the property for the past two years. It is a single story home with a large basement, they moved from Rochester and has some storage in the basement. They feel it would be best to have an emergency generator and would like to put the generator on the side of the property by it would be in a "common area" and not technically on their property. This would be a whole house generator. Mrs. Burkard asked if the generator would be next to the air conditioning unit, Mr. Streer stated no. The location is not currently staked. Plans for where the generator would be located were reviewed and named, Exhibit A. It will be located near the back of the house and Mr. Streer is willing to put landscaping in the location and, in fact, has already placed landscaping around the space where the generator will be placed. Mr. Mills asked if he placed landscaping around the generator. Mr. Streer responded no, they put it around the space where the generator will be placed. Mr. Streer stated that they have a block window near area and they are going to place another glass block there so that no fumes will get into their basement. Mr. Mills asked if they would landscape more around the generator so that it will fill in with foliage and be more appealing to look at. Mr. Streer stated that no, they were going to fill in the area with stones in the front and back of the generator. The generator would be on a concrete slab and they would fill in the area with flat paver stones. When asked if the generator is already there, Mr. Streer stated that they generator is in his garage but not installed yet. Mr. Mills said that based on the location and the caliber of the neighborhood they would like it to be aesthetically appealing to have more foliage. Mr. Streer says that there is a bush on the right hand side and on the left hand side it curves and feels that it is already aesthetically appealing. The Board is asking for landscaping in order to cover the generator from the street view. The developer for the neighborhood, Dominic Piestrak, spoke and knows Mr. Streer extremely well. He stated that if he asked Mr. Streer to put in the trees that he would. Mr. Streer states that he does care about how his property looks. There is generally a condition to landscape around the generator and area. Mr. Street says that he will do what the Board would like and will put something in front of it. He stated that the electrician said that all landscaping would need to be so far apart from the generator. Mr. McNamara stated that the generator is on the public drainage easement and wants to know if that concerns the Town at all. It says on the SC Electric documentation that it inside the public drainage easement. Mr. Streer states that is where his property line is. Mr. Bengart states that this might be a concern on two levels. First, we might need a sign off by the Building Department and secondly, Mr. Streer would have to agree, if granted, that any work that would need to be completed in the area, the generator would have to be removed and reinstalled at Mr. Streer's expense. Mr. Bengart stated that he had a personal experience of the same nature. He had a pool and he had to sign that if the Town ever needed to come in a do work, it would be at his expense to remove the pool. Mr. Streer says he does not have much choice because that is the location that the generator will need to be placed. They did discuss an alternative location outside of the public drainage area. Mr. Streer says that the generator warranty is extended to 10 years instead of 5 years if installed by August 6, 2019. They recommended he contact the company to see if they can extend the warranty if installed by the end of August. Site A would be beneficial because it would be outside of the public drainage easement. The

whole rear of the house is landscaped beds so that might not be an option. Mr. Streer says that after this discuss, he needs to meet with the Building Department to see what they have to say about this issue. If it does come to where the Town has to remove it, it would be at Mr. Streer's expense. Mr. Streer states that he has no preference where the unit goes but the electrician stated that this would be the best position for the generator. The Board cannot go forward with this as there are too many questions still unanswered. Mr. Streer has the option to either go forward and risk being denied, to table the topic until questions are answered or to withdraw his request. The Board asked what Mr. Streer would like them to do and he said to table this issue until the next meeting.

### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **table**, Appeal No. 1 in order to give Mr. Streer the opportunity to obtain the answers to his questions regarding the public drainage easement and other information requested by the Board.

### **ON THE QUESTION:**

They asked Mr. Streer to go back to his contractor and to try to locate another location on the property to place the generator. Depending on the area, Mr. Streer, might not even need to come back to the Board for approval.

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

### **MOTION CARRIED.**

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

Michael Kohrer  
Agricultural-Flood Zone

Requests the Board of Appeals approve and grant a variance to allow a detached accessory structure within the front yard setback located at 7960 Goodrich Road.

Appeal No. 2 is in variance to §229-34.

### **DISCUSSION:**

An email from Joseph Lancellotti, Civil Engineer Town of Clarence, to Jim Callahan, Jonathan Bleuer was read into the record. After reviewing the appeals for the July 9, 2019 meeting there are two that require comment from us. First, 7960 Goodrich Road is in a flood zone as stated, Mr. Kohrer will need to follow the flood plain development permit process in order to construct his shed. The email was dated July 2, 2019. This was entered as exhibit A.

There are neighbor notifications on file for 7870 Goodrich and 8050 Goodrich Road.

Mr. Kohrer spoke and stated that he is looking for relief from water, his yard is wet many months out of the year. He stated that his shed is out in the yard away from the house and it sits in standing water. He has to walk through this water to get into the shed. He stated that this spring with all the rain we have received that it has been even worse. He would like to bring the shed up into the "parking area" in his driveway in the front of the house where it would be much more accessible to himself and where it would be up and out of the water to help extend the shed lifespan. Mr. Mills asked what the setback is and it was answered about



200 feet. He was asked if he has any trees as a buffer in the front of the house and Mr. Kohrer answered yes. He was asked if he has any future landscaping plans and Mr. Kohrer answered no. Mr. McNamara asked if that part of the property was up out of the flood plain and Mr. Kohrer answered yes. Mr. Hickey asked if the shed that will be placed on the property is the exact one pictured and Mr. Kohrer answered yes. He then asked what would be stored in the shed and Mr. Kohrer answered his lawn tractor, snow shovels, snow blower and various tools. He stated that he has lived there since the end of 2013 and he plans to stay there until he is carried out. He was asked if he considered any other parts of his property to place the shed. He was asked if any of his tools have been damaged by the water, and Mr. Kohrer said no that it is more of a nuisance. Mrs. Burkard did not have any questions. Another question was asked, what is the plan for the shed that is in the back already and Mr. Kohrer said that it would be demolished because it is falling apart due to the water. Mr. Kohrer asked a question about the flood plain and was referred to Town Engineering.

**ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve**, Appeal No. 2 as written.

**ON THE QUESTION:**

The only question is to require that the existing shed be demolished. The motion was amended to remove the existing shed if this appeal is approved. Daniel Michnik asked about the dimension of the property and the rare flood plain circumstances that he experiences that this variance is not a detriment to the environment or the surrounding community.

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

**MOTION CARRIED.**

**Appeal No. 3**

William H. King  
Residential Single Family zone

Requests the Board of Appeals approve and grant a 5.5' variance of:  
 A) 25' to allow a 100' frontage lot  
 B) 25' to allow a 100' frontage lot:  
 for the creation of two 100' frontage lots located at 6450 Heise Road.

Appeal No. 3 is in variance to §229-50(A).

**DISCUSSION:**

Mr. King is looking to divide the lot in half. He bought the property back in 1983 they bought the property based on the 100 foot frontage. The rules changed when Mrs. Hallock was supervisor, and at that time they discussed it with her and Mr. Callahan and was told that the variance was the best way to go. Neighbor notifications are on file from 6430 Heise Road, 6435 Landstone Road and 6490 Heise Road. Mr. King said that he put the lot up for sale last year but nobody wanted to buy one lot at over 5 acres so he is coming for a variance to split the lot. Mrs. Burkard referred to a paragraph that she'd like Mr. King to explain. She read "I spoke at the town board meeting years ago when this change was proposed. The town's concern was sprawl. Although other municipalities vowed that making the frontage wider only made sprawl

worse.” Mr. King was asked why he stated that allowing smaller frontages made the sprawl worse. Mr. King stated that the sprawl as she described it in that meeting was too many people and facilities having to be spread out to get to them. He spoke at that meeting because he had brought an article regarding California had had the same problem, and when they expanded the frontages it actually makes it worse. Mr. King stated that the paragraph was at the time, Mrs. Halloc and Mr. Callahan. He stated that he was asking \$185,000 for the total land and he did not receive any offers. Mrs. Burkard asked what he would be selling the lots for if divided and Mr. King stated that \$95,000 seems to be the going rate for lots in Clarence. Mr. McNamara asked where he currently lives since he bought this property back in 1984. Mr. King stated that he currently lives at 5090 Glenwood Drive. He had planned on building on the property, but never did. At the time he purchased the property, a subdivision was approved for there, which fell through so the lots were sold. They’re all roughly 200 ft. lots, one is 150. The lots have been purchased, houses built on them, and Mr. King’s are the only vacant lots remaining. Several of the other original lot owners have also split their lots in half and sold them. Mrs. King stated that when they purchased the lot, it was zoned agricultural, not residential as it is now.

Mr. Mills asked how long the property was on the market, to which Mr. King responded just last summer, approximately 3-4 months. He did not use a realtor, he put a sign out to see if anyone was interested. When he spoke to a realtor, they stated he’d receive more interest if there were two lots. Mr. Mills asked whether Mr. King had marketed it at any other point besides this past summer, Mr. King said they’d listed it with realtors years ago, but nothing recently.

Mr. Hickey asked when Mr. DeStefano’s variance was granted. It is believed to have been prior to the change, his was only a 190 ft. lot, that was when it was 100 foot approval and that’s why he had to have his variance, because he wouldn’t have two 100 ft. lots.

Mr. Michnik asked whether Mr. King has a copy of his deed from the purchase of the property (1:14) with him, Mr. King stated yes. Mr. Michnik said that unfortunately they can’t address the Supervisor’s statement, but he personally is not in favor of splitting the lot because of the laws that are on the books today. Maybe at that point when it was purchased, he should have approached the town board at that point about wanting to divide the lots at that time, if he had heard there was going to be a change. It’s such a nice road with big frontages. Mr. King stated they’re lesser than his lot now, which Mr. Michnik pointed out they were also approved before things changed. Mr. King asked why it would be ok for his neighbor’s but not ok for him just based on time? Mr. Michnik stated that things have changed, and that’s the reason they have the laws for a reason. They’re looking at it from that point of view. They’re not looking to hurt Mr. King in any way, he is asking them to change something for him, and according to the books and the law today, they can’t which is why he’s here to see them. He is only one vote, but pointed out that Mr. King didn’t list it was a realtor or real estate agency, simply putting a sign out would only benefit the people driving down Heise road, he’s very familiar with that area and if he put a sign out there, people aren’t driving slow enough down Heise Road to see the sign. As Mr. Mills talked about, the fact that they’ve never listed it with a real estate agency and you only had it up for a couple of months, they should maybe try listing it with a real estate agency. There were a couple of options that Mr. King should check out to see if they are viable options to sell the property. Mr. King said that he disagrees with that, because the lots sitting on Goodrich Rd. outside of Spaulding have been for sale for years, and they’re only 130-140,000 ft. there they sit even though they’re only 140,000 people still don’t want them. Mr. Michnik stated that price plays a role as well. Mr. Michnik doesn’t believe that it is necessary to do that, because Mr. King has not taken due diligence by trying to list it with a true real estate agent who would market it for them.

Mr. King stated that the little house on Harris Hill Rd. was allowed to go on sale on a postage sized lot, they don't have sewers either. Mr. Michnik said that you always have to know the reasons as to why something was done.

Mrs. Burkard asked what size the lots are, Mr. King replied DeStefano's was 196, that was the one that was cut in half and given to the kids, then the other two now have six houses on them. Mrs. Burkard asked if when the law was changed, whether Mr. King had been told about it ahead of time, that he'd have a chance to split it at that point? Mr. King said that it was in the paper and he went to the meeting, yes. That Mrs. Hallock said the variance would be open, it wasn't intended to harm people that it would have to go through that process. Referencing back to a past meeting and conversations / statements made by Mrs. Hallock. Mr. King went to the Engineering department shortly after that he doesn't remember the man's name that he spoke to, but the man said think twice about splitting it if you're not sure you want to sell it (10 or so years ago) because a 5 acre lot at that point gives you some leeway on other things that wouldn't be allowed on a smaller lot. That if it was split then he'd have to pay the taxes on two lots, and it didn't make sense to split it at the time knowing that the variance was an option.

Mrs. Burkard asked if Mr. King has consulted a realtor at all recently. Mr. King stated that yes, and the realtor said that as it is now you may be looking at \$125,000, and that if they could find a contractor that would pay \$150,000 because he could get two lots out of it you might get it. Mr. King stated that he paid \$20,000 for the lot back in 1984.

#### **ACTION:**

Motion by Jonathan Hickey to approve the request as written. No Second motion, the request fails. With no second motion, it is a denial of the application. Mr. King can look in to consulting an attorney to appeal the decision to a higher court, or he can come back with some other variation of this request.

Mrs. Burkard asked if Mr. King could put it on the market for example the next year, then come back to the board and say he could not sell it with a realtor. Because nothing with this request passed, it's a failure by failure to get a motion. Mr. King stated that he wrote it up the way that he did because he saw that Amherst had a big publication on what the variance required and show no harm, and that he wouldn't harm his neighbors. He felt that he met that.

Mr. Michnik stated that unfortunately there wasn't a second to the motion, so the request is finished with no action.

#### **Appeal No. 4**

Michael Anderson  
Residential Single-Family zone

Requests the Board of Appeals approve and grant a variance of:

- (A) 2.53' to allow a 9.97' side yard setback
  - (B) 17.59' to allow a 27.41' rear yard setback
  - (C) 4.5% to allow 22.5% lot coverage;
- for an addition to the existing single-story principle structure located at 8690 Nottingham Terrace.

Appeal No. 4 is in variance to (A) §229-52 (B), (B) §229-52 (C), (C) §229-56

Two neighbor notifications on record – 8680 and 8700 Nottingham Terrace, neighbors to both the east and the west.

Mr. Dan Strip stated that he is filling in for Mr. Anderson, as he is out of the country, though he does not have anything in writing stating he is representing Mr. Anderson. Because there is nothing in writing regarding the representation, there will be a decision to table the request. The next meeting will be August 13, 2019, something is needed in writing stating Mr. Strip has permission to represent Mr. Anderson, who is the architect. Request of the board to table the request so that Mr. Strip can return with the proper paperwork.

**ACTION:**

Motion by Ryan Mills to table New Business Appeal No. 4, Second by Dan Michnik.

**ON THE QUESTION:**

Mr. McNamara asked on the variances, 2.53' is pretty exact, that's cutting it very close. He's not sure of the plans or the buffers, but suggests giving himself an extra foot just to be safe. That should be done at least 10 days before they come out for the next meeting. Advised to clearly stake it and get the numbers to the building department as well.

Mrs. Burkard asked what the size of the addition, Mr. Strip stated about 70x40, 1700 sq. ft.

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

MOTION CARRIED.

**Appeal No. 5**

Joseph O. Melluso  
Residential Single-Family zone

Requests the Board of Appeals approve and grant a variance of 5' to allow 5' side yard setback for the construction of a detached accessory structure (garage) located at 8196 Stahley Road.

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

Neighbor Notifications, neighboring house (8198) has been sold and no new owner has moved in to date, and 8190 Stahley Rd., there is a neighbor notification from that residence.

Mr. Melluso stated that the existing structure needs to come down, it is in pretty bad shape and he'd like to rebuild a new garage in its place a little bit bigger than what is there now. Because of the angle of the garage to the property, he'd like to turn it a bit to square it to the house and keep it 8' away from the house. Then go the 9' wall and put an eaves the same setback as the house, then side all of it to match the house.

Mr. Mills clarified that the old garage is coming down, the plans look like a pre-fab structure, Mr. Melluso stated it's not pre-fab, he just used to get some prints until the contractor was able to get them prints, because he's having it built right and he's doing all of the work for him. They will provide drawings of everything

they needed. The prints on record for the meeting are more just to show the style of what he will have built, with local material and not from Menard's. Because it will look like the photos, they will be marked for the record. Exhibit A shows wall configuration. Pre-carb, single door – Mr. Melluso stated that there will be one change from that print, they're going to add a second door in the back. A 6' overhead door in the back, single bay. Vinyl siding to match the house, one window on the door wall.

**ACTION:**

Motion by Patricia Burkard to approve Appeal No. 5 as written, second by Dan Michnik.

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

MOTION CARRIED.

**Appeal No. 6**

John Miosi  
Residential Single-Family zone

Requests the Board of Appeals approve and grant a variance of 75' to allow a 175' front yard setback for the construction of a Single-Family home located at 5815 Newhouse Road.

Appeal No. 6 is in variance to §229-52 (A) (3), Established front-yard setback 100'  
Previous ZBA variance approval for 350' setback on 4/11/2017.

**DISCUSSION:**

Mr. Miosi stated that he's looking for a variance of 75' to match the variance given last month to the adjoining lot.

Mr. Mills asked how large the parcel is, Mr. Miosi stated 6 acres, and the parcel next to him is about 5 acres, both of those parcels are under contract.

Mrs. Burkard asked how wide the lots are, Mr. Miosi stated 153 on the left, 150 on the right.

There is a design for a house on this lot, approximately a 2400' ranch for himself. Currently Mr. Miosi resides at 5473 Firefly. The lot is under contract, Mr. Bengart stated that the condition can be made based on him purchasing the property currently under contract.

Mr. Mills asked Mr. Miosi if he does acquire the property, what is the longest before he'd break ground on it, Mr. Miosi stated that they'll probably break ground around next March. Mr. Mills asked if setting a 2 year expiration on the variance would be acceptable Mr. Miosi said that would be no problem at all.

On the question, Mr. Derek Landri stated that the last time he was here, the gentleman cornered him outside and gave him the elaborate plans for the property and what he plans on doing. His concern is that there was mention of putting a pond in, and they're both in flood plains. He doesn't know if it's still planned or not. Mr. \*\* stated that if Mr. Miosi were to build anything, that the town engineer would give him a drainage plan which he would have to follow strictly, and if for some reason water was coming on to Mr. Landri's property after he did his work, it would be his responsibility to correct it. He would not be given a certificate to move in unless it was up to code.

Mr. Miosi was asked whether he had a copy of the contract or not, there was discussion as to whether he had to have it for the last meeting or the time before that. He's asking for a variance on a property, the board needs to see that Mr. Miosi actually owns said property. For the record, a residential real estate contract sale dated July 8, 2019.

**ACTION:**

Motion by Ryan Mills to approve Appeal No. 6 under the following conditions:

1. This variance applies only to the applicant
2. Variance expires within two years from the date of issuance

Second by Dan Michnik, in agreement with the conditions Mr. Mills stated.

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

MOTION CARRIED.

**Appeal No. 7**

John Locurcio  
Agricultural-Flood zone

Requests the Board of Appeals approve and grant a variance of 6' to allow a 9' side yard setback for the construction of an attached accessory structure located at 10025 Tonawanda Creek Road.

Appeal No. 7 is in variance to §229-31 (A) (2)

Read in to the record as Exhibit A, correspondence from an email from the Civil Engineer from the Town of Clarence Engineering Dept. Joseph Lancellotti to James Callahan and Jonathan Bleuer regarding this ZBA meeting.

Mr. Locurcio presented the paperwork that he has from FEMA approving the removal of the necessary portion of the property, which has been entered as Exhibit B. Joel Berger, who stated he is the contractor, stated that Danielle Reagan at William Schutt Associates has submitted the paperwork electronically.

Mr. Locurcio explained that he'd like to put up another attached garage to the existing structure. Through the years it's accumulated quite a few pieces of equipment, and it's become difficult for his family to gain access through the garages. His parents are becoming a bit elderly and it's a shame for them to have to park outside, the garage is utilized for equipment.

Mr. Locurcio has plans to present, shows footprint elevation, the new structure, where it sits on the property line. The main concern is that the one corner was 9.2' from the property edge. When he was inquiring about this, there wasn't much information give as far as what the distance was, he'd assumed it was about 10'. When he went for his building permit it was brought to their attention that because the roof line was going to be attached, that it possibly would be 15'. This threw a kink in to things, as so much time and money has gone in to the plans, he would have accommodated the requirements from the beginning had he known earlier. There is a wooded area that separates the parcels, only the one corner is an issue. He spoke with his neighbor on that side, whom is aware and fully accepting of this. Mr. Locurcio has the paperwork with his neighbor's signature to support this statement.

Neighbor Notifications from Mark Cummings, the neighbor to his left, as well as the neighbor to his right. It was read that 9955 Brauer, 10055 Tonawanda Creek Rd., 9870 Brauer, and 10000 Tonawanda Creek Rd. Small prints of the building were handed in.

Ryan Mills asked if the façade would be all brick, Mr. Locurcio said that yes, they'd like to have the structure look as if it's matched with the original existing structure. He would like to have the roofline connected, he feels it wouldn't look right just having the two pieces next to each other. Asked how Mr. Locurcio planned on using the interior space besides garage, to which Mr. Locurcio replied that storage, and possibly in the future, a place to gather with friends and family. He doesn't plan on finishing that area initially, then down the road look at his budget. He doesn't plan on operating any kind of business from the structure.

Mrs. Burkard asked what the size of the original house is, Mr. Locurcio replied that the original home is 3600 sq. ft. It was built in 2013, Mr. Locurcio is going on his 5<sup>th</sup> year living there. He has two vehicles, his girlfriend has one and his father has one as well, then all other equipment to store in the garages.

Per the contractor, the estimated cost of the project is \$186,000. There is a pond in the backyard, which was built prior to the house being built. Mr. Locurcio would like to begin the process as soon as possible.

Mr. Locurcio's parent's live in the home, but have their own separate areas, a Life Estate. The attached accessory will not be used as a secondary living area.

Motion by Ryan Mills to approve Appeal No. 7 as written, second by Richard McNamara.

#### **QUESTION:**

The applicant has demonstrated that based on the size of the parcel, the degree of foliage and shrubbery between him and his neighbors and as demonstrated by the drawings, that the character of the structure is going to match and enhance the structure.

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

MOTION CARRIED.

**Motion to close the meeting at 9:03pm made by Richard McNamara, second by Patricia Burkard.**

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

MOTION CARRIED.