

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday August 11, 2020
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:02 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
Councilman Paul Shear

Motion by Raymond Skaine, seconded by Ryan Mills, to **approve** the minutes of the meeting held on July 14, 2020 as written.

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

MOTION CARRIED.

Other interested parties present:

Sam Cappiello	Angelyn McDuff	Patrick McDuff	Matthew Goehle
Sandry Illig	Ken Przybyla	Colleen Insinia	John Insinia
Maron Carrubba	Jeff Carrubba	Camille Irr	Andrew Irr

New Business

Appeal No. 1

Samuel Cappiello
Residential Single Family

Requests the Board of Appeals approve and grant a 960 square foot variance to construct a 960 square foot addition to an existing detached residential accessory structure located at 6330 Herr Road.

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

*Property previously received a variance for existing accessory structure.

DISCUSSION:

Neighbor Notifications from 9665 Keller, 9675 Keller, 9695 Keller, and 6320 Herr Road are on file. The only one of those properties that is an actual neighbor is 6320 Herr, which is right next door. Mr. Capiello is looking to put an addition on the already existing barn that he built about 11 years ago. His father passed away, and he has inherited his tractor and car, so he needs more space.

Additionally, his job currently entails him to work from home, he currently has a workshop in his basement which he would like to move out to the parcel. He would use the same contractor, same type of structure, and a concrete floor, as well as landscape all three sides. He will not be running his or any business out of the structure.

Mr. Skaine stated that he would almost classify this as a secondary structure. Mr. Capiello stated that the blueprints Mr. Skaine is looking at is from the original drawing of the current detached structure, he has not had blueprints made of this proposed structure made yet. Once he gets the variance, he will get the blueprints for the town. Mr. Skaine stated that he is not comfortable with not being able to see the drawings of the proposed structure, and the total variance size would be over 1,000ft between the two that he has received. He was not satisfied with the way it looks when he saw it, and is curious if Parco will actually be able to make the two structures match. He doesn't feel he would be able to vote yes without seeing the actual drawings and plans. Mr. Capiello stated that he did not want to spend the additional money to have the plans drawn up for basically a duplicate structure, without knowing whether he would be able to proceed with the building or not. He is not planning on putting up a secondary structure, he is attaching to an existing structure, and it will be exactly the same structure, using the same materials. Mr. Skaine asked if the size of the last building had been reduced, Mr. Capiello stated that 11 years ago he had been approved for 36x24, and at that time the land was owned by Thompson down the street, now it's owned by the Town, and a salt barn has also been put up right behind him. He wants to get all of his stuff inside the barn, and will do what he needs to do to please the committee. Mr. Skaine stated that he would have liked to see plans from Parco showing that the existing structure can be cut open and have the new structure added on to it, while keeping it looking identical to the current structure. Mr. Capiello stated that they will go back one panel, and move forward from there. Much discussion continued between Mr. Skaine and Mr. Capiello regarding the process for seamlessly adding the proposed structure on to the existing one.

Mrs. Burkard asked Mr. Capiello to please explain the process again, as far as how the new proposed structure is going to be attached the existing one. Mr. Capiello explained that the current garage door is coming off, the wall will be staying, and the new structure will be attached to a 40ft. addition. It will look like the same building just a bit longer. He is not changing the elevation of the roof, nor using new materials.

Mr. Mills asked whether Mr. Capiello had any intentions of running a business out of the new structure, to which Mr. Capiello stated no.

He then asked if Mr. Capiello would be able to point them to any other similar sized structures for comparison. Mr. Capiello said that down the street from his house is a similar size structure, and further down on Keller there is also a similar structure. Mr. Mills asked if Mr. Capiello had explored doing anything attached to the principal structure, but Mr. Capiello said that the cost would be three to four times the amount of what he is currently hoping to have built. Additionally, the back of his house has an in-law suite. It would be a large undertaking to do it off of the principal structure. He would like to go for the 40ft as proposed, due to the items he wants to be able to store in it. Currently they are being stored elsewhere, and he needs to have them removed.

Mr. Cappiello confirmed that the property surrounding him is owned by the town.

Upon question, Mr. Cappiello stated that he has talked to Parco, and once he has the permit they will be happy to begin as soon as possible.

Mr. Mills asked if they were to tentatively approve it based on the plans that he is going to submit to the Building Department, and if the Building Dept. is ok with them, would that be acceptable? Mr. Bengart stated that the Building Department will want approval one way or the other.

Mr. Skaine reiterated that it is a substantial variance, and he is not comfortable voting in favor of it, due to the fact that they're not sure what it is going to look like. He is concerned that it could potentially have an adverse effect on the property.

Mr. McNamara stated the construction would be simple. There is a steel roof and the panels peel up then are easily placed back, making for a seamless transition.

Mr. Skaine asked if the appeal is tabled until plans are presented, how long it stays tabled. Mr. Bengart stated that any appeal tabled stays tabled until the applicant requests to have it brought back to the committee. We are still limited due to COVID, and already have a full agenda for September.

ACTION:

Motion by Ryan Mills to **approve** Appeal No. 1 seconded by Patricia Burkard as written with the following conditions:

- applicant agrees it will not be used for any business purposes
- applicant agrees to landscape 3 sides of it: 4 spruces along the north side, bushes along the south side, and arborvitaes on the west side.

Mr. Skaine asked if there should be stipulations placed for the height of the landscaping, it was agreed that the highest trees will be placed along the north side of the structure. It was also pointed out that there is no existing landscaping alongside of the last addition that was built. Mr. Cappiello stated that it was never part of the variance.

Ryan Mills again moved to **approve** Appeal No. 1 with the following conditions:

- applicant agrees to not run any business out of the structure.
- applicant agrees to plant Blue Spruce along the entire north side of both the new and the existing structure. At least 8 should go along that whole span.
- along the west the applicant agrees to plant arborvitaes or similar at least 3 ft. in height, and then some smaller bushes again of his choice along the south.

Mr. Michnik asked if there are any kind of bushes along the south side of the building, Mr. Cappiello replied that he has Burning Bushes along that side right now, he would like to do the same thing. Behind that he also has a berm with Blue Spruce.

ON THE QUESTION:

Mrs. Burkard stated that this is a unique situation, as the town owns the property south, west and north of the structure.

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

MOTION CARRIED

Appeal No. 2

Patrick McDuff
Residential Single Family

Requests the Board of Appeals approve and grant a 124 square foot variance to construct a 324 square foot detached accessory structure located at 5704 Fairmeadow Court.

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

DISCUSSION:

Neighbor Notifications from 5710 Fairmeadow Court, 5614 Woodruff, 5620 Woodruff, 9694 Rosecroft Dr., and 9706 Rosecroft are on file.

Patrick McDuff stated that he would like a variance to construct a pool house for storage for pool equipment, as well as a shaded area.

Mrs. Burkard noted that the actual structure is 144 sq. ft., the rest is overhang or covered porch. The siding on the structure itself will match that of the house, Mr. McDuff agreed.

Mr. Skaine asked Mr. McDuff if he has decided where they will put the door to the structure yet, Mr. McDuff responded that the door will go on the driveway side of the structure.

Mr. Skaine noted that there will be supplies stored in the structure, and asked why a 14ft. variance is necessary. Mr. McDuff said that the architect that they have contracted with thought that it was a suitable and appropriate height to work with, but they aren't set on that specific height. Mr. Skaine pointed out that on their floor plan the covered porch and storage, then confirmed that there won't be any storage on a second floor, to which Mr. McDuff confirmed that is correct.

Mr. Mills noted that the covered area will have stone with a fireplace in the center, and a TV, but the whole structure other than that stone section will be vinyl. Mr. Mills then asked about landscaping, Mr. McDuff said they had not decided on the landscaping yet, and they figured they could work on that once the building was finished. Mr. Mills is particularly interested with the side facing 9694 Rosecroft and 9706 Rosecroft. Mr. Mills would like to make sure there is some landscaping along that side so that the residents in those houses aren't looking at a vinyl structure. Mr. Mills asked if it is part of the variance, would he agree to put landscaping in there, Mr. McDuff replied that he would. If they made the condition of at least 3' in height but that Mr. McDuff could pick the species, would that be acceptable? Mr. McDuff stated yes. Mr. Mill asked what the budget is for the project, Mr. McDuff stated that currently it is approximately \$30-\$35,000.

ACTION:

Motion by Raymond Skaine, seconded by Dan Michnik to **approve** Appeal No. 2 with the condition that landscaping is added along the entire west side of the structure consisting of plants at least 3' high, and at

least 4-5 plants – arborvitae or similar. Dan Michnik confirmed that they will follow through and complete the landscaping requirements based on what Ryan Mills has stated for the conditions.

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

MOTION CARRIED

Appeal No. 3

Matthew Goehle
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) An 880 square foot variance to allow a 1,600 square foot detached accessory structure.
- 2.) A 5.5' variance to allow a 21.5' tall detached accessory structure.
- 3.) A 3' variance to allow a 12' tall garage door.

All requests apply to 9559 Greiner Road.

Appeal No. 3 is in variance to 1.) §229-55(D)
2.) §229-55(E)(2)
3.) §229-55(I)

Raymond Skaine recused himself from Appeal No., Patrick Krey stepped in as an alternate.

DISCUSSION:

There is only one Neighbor Notification from 9531 Greiner Road, Mr. Michnik asked why Mr. Goehle did not obtain a notification from his neighbor across the street. Mr. Goehle stated that he was under the impression it was only adjacent neighbors on the same side of the street, he didn't realize he was to go across the street also. Jim Callahan stated that due to the COVID pandemic, the Zoning Dept. is sending notifications to everyone within 500 ft. It's not noted in the file, but it has been done.

Mr. Goehle explained that he would like to remove the current detached garage for many reasons, but ultimately because it is too small and in rough shape. He would like to construct a larger one because including his work vehicles he has 4 vehicles that currently are all parked outside. He would like to get them inside the garage for storage. Two of the work vehicles are just over 10ft. tall, which is what is driving the height size for both the door as well as the total height. Because he only has one accessory structure, he would also need to store his lawnmower, snow blower, and all of the outdoor gardening supplies, kid's toys, etc. are all effecting the size of the proposed structure.

Mrs. Burkard stated that it is a pretty large building for that area, and asked Mr. Goehle if there are any other similar buildings in his area on Greiner Road. Mr. Goehle stated that he is aware of a big red barn across the street down about a quarter of a mile to the east. Continuing in that direction, there is a newer structure that is a similar size to what he has requested.

Mr. Goehle stated that it is a pole barn, he had left it up to the builder, who suggested the metal with vertical siding, but Mr. Goehle stated that he is open to suggestions. He wants to make sure that the property fits in to the area, so he is open to the board's suggestions. Mrs. Burkard asked what color it will be, Mr. Goehle stated that it would match the same color as the house. The roof would be a metal roof, and would match the color of the house as well. Mrs. Burkard asked what the square footage of his house

is, Mr. Goehle replied that he believes it to be just under 1600 sq. ft.. Mrs. Burkard commented that the structure would be the same size as his house. Mrs. Burkard asked if he will just be storing vehicles out of the building, and not running a business. Mr. Goehle stated that he does run a mobile auto repair business, but he wants to be very clear that he is prepared to have it as a condition of the variance, should they approve it, and that he absolutely would not work on vehicles out of the structure.

Mr. McNamara said that he noticed some stuff out in Mr. Goehle's yard, and asked if his intentions are to clean up and move the items in to the structure? Mr. Goehle agreed that yes, he is also waiting for a dumpster to come so that he can clean up the existing garage. He is not planning to have the structure heated.

Mr. Mills stated that he is a bit troubled by the size of the proposed structure, especially compared to his principle residence. He's trying to think of ways that Mr. Goehle can accomplish his goals, but also scale down the size a bit. Looking at the proximity of the principle residence to the road, then the size of the proposed structure, he didn't see anything along that stretch of Greiner that is comparable to the size that Mr. Goehle is requesting, factoring the parcel size, size of the principle structure, and then also requested the accessory structure. He asked Mr. Goehle if he'd be able to get away with less square footage and still accomplish what he'd like to accomplish, to which Mr. Goehle replied that he has reviewed the plans, and he's not sure how he'd be able to do less square footage. He said to be honest, he thinks it may already be tight inside. Because he doesn't have an attached garage or any sheds for the lawnmower or anything, he doesn't feel he could come any lower in size.

Mr. Mills asked whether an attached garage would be sufficient, something attached to the house that would look like it was part of the house. The current plans may make it difficult for someone driving by to differentiate the accessory structure from a living space. Mr. Goehle stated that because of the location of the current detached structure, if it was an attached garage next to his house, it would be pretty close to the street, and cut out more than half of the driveway. If it was an attached garage behind his house, the septic system is there, and there are steps that go down to the foundation, and the current garage is in the way. Mr. Mills asked whether Mr. Goehle has had an architecture look at the plans, Mr. Goehle replied that not the whole property, but he does have a builder who got the plans from an architect. He has a design for them view now, which he distributed for review. A copy of the plans were entered in to record and left on file.

Mr. Krey asked if the big center door would be able to be moved to the right or not, Mr. Goehle replied that he doesn't see why not – his goal had been to make it symmetrical, but he doesn't see why it couldn't be moved. Mrs. Burkard said she agrees with the request regarding moving the door to the right. Currently it looks like such a big, commercial building, close to the house in a residential area. Mr. Goehle stated that the only thing the drawing doesn't represent, is that he was planning on having 4' Wains Coating around the perimeter, in order to make it look less like an industrial building. Additionally, he would put landscaping along the side away from his principle structure.

Mr. Michnik asked Mr. McNamara if he thinks it would be possible to have the center door moved to the right. He suggested what might also help, is to go with a higher door on the smaller ones – 10ft high would make it look less industrial also. He would like to see the 12ft. stay that size, it will appear more symmetrical.

Mrs. Burkard asked what the garage doors will look like. Mr. Goehle stated that it is his understanding that they are insulated garage doors, they are not industrial pull up doors, they would be the same style

that you'd see on a house typically, and they are insulated. The roof of the accessory structure will be a dark roof to match the color of the house. Mr. McNamara asked whether Mr. Goehle would be opposed to putting some windows on the doors, to help make it appear less industrial, Mr. Goehle agreed. Mr. McNamara also asked about the possibility of adding some landscaping to the front of the structure. Mr. Goehle stated that he doesn't have any around his house, but that he would be open to that condition. Stated that something else is needed to help the front elevation, so that it's not just all metal from the structure that is seen. Mr. McNamara suggested some wider trim around the doors. Discussion continued regarding possibilities for the structure to help tie it in to the house, and look less industrial.

ACTION

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

- The front of the accessory structure has horizontal vinyl siding to match the house
- Windows on all 3 garage doors
- 10' man doors with windows
- The color siding on the rear and the side of the structure matches the house, as well as the roof.
- No business is to be operated out of the structure
- 4' Wains Coating around the front, side and back of the accessory structure
- Landscaping on the east side of the structure
- 8" trim around the doors

ON THE QUESTION

Mr. Krey stated that the reason he is voting in favor, is even though it is a larger, more visible structure, that they have mitigated the concern they had with it by placing all of the conditions on it that they have.

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

MOTION CARRIED

Appeal No. 4

Sandra Bennett Illig
Residential Single Family

Requests the Board of Appeals approve and grant a 2' variance to allow a 6' tall fence to be constructed within the front yard setback located at 8825 Roll Road.

Appeal No. 4 is in variance to §101-3(C)(2).

DISCUSSION:

Mrs. Illig stated that she is putting a privacy fence up all along there, and she would like to extend it to an existing fence. It's her neighbor's backyard, and he already has a 6' fence, she would like to extend it to where his is. She stated that the worker doing her fence talked to her neighbor, and he will be replacing his fence as well, then making it so that his will butt up to hers.

Mr. Skaine asked for clarification regarding Ms. Illig’s last statement, in regards to the fence placement. Her current fence in the back is about 190’- not all the way to the edge of her property, but to the edge of her finished property. She would like a 6’ fence in the front of her property. She believes it to be approximately 30’ from where the fence would end to the road. Ken Przybzla spoke in regards to the distance of the proposed fence to the roadway. It will go to the end of the neighbor’s existing fence, no further.

Neighbor Notifications are on file for 5580 Shimerville and 8815 Roll Road.

Mrs. Burkard said that she looked at the property again, because she wanted to check on the visibility for getting in and out of the driveway, as it’s not easy to do on Roll Rd. The fence won’t be any further than the shrubbery that is already there, so it won’t affect visibility.

Mr. Mills stated that he wants to make sure the proposed fence only goes to where the neighbor’s fence currently is on the east.

Mr. McNamara voiced his concern regarding the gap in between the two fences.

Mr. Bengart asked Ms. Illig what kind of fence she is having installed, she replied it is a solid, vinyl fence.

ACTION

Patricia Burkard made a motion to **approve** Appeal No. 4 as written. Ryan Mills seconded, under the following condition:

- The fence only extends in the front yard to the point of the already existing fence on the neighbor’s parcel to the east.

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

MOTION CARRIED

Appeal No. 5

John Insinna
Residential Single Family

Requests the Board of Appeals approve and grant a 5’ variance to allow a 40’ rear yard setback for the construction of an attached covered porch located at 8919 Candlewood Lane.

Appeal No. 5 is in variance to §229-52(C).

DISCUSSION:

There are no neighbor notifications, upon question Mr. Insinna stated he was told the Planning and Zoning Office would do those because of COVID. Mr. Michnik commented that each of the other Appeals have also had their own neighbor notifications as well. Mr. Callahan explained that it is part of

the application process for the applicant to supply neighbor notifications, but the office does notify neighbors as well.

Mr. McNamara noted that they're putting in a screened in porch, tearing out all of the concrete, pouring a foundation, concrete pad, and the cosmetics will match that of the existing house.

Mr. Skaine asked if Mr. Schaefer also designed the front porch, Mr. Insinna confirmed that yes, he did.

Mr. Mills said that looking at the elevation, the porch will be panels and screens, then asked if they plan to remove the screens in the winter and put windows in. Mr. Insinna stated that they may or may not put glass in. They would prefer not to, but may need to in order to winterize it. Mr. Mills inquired whether they plan to include electric, but no heat source, which Mr. Insinna confirmed.

Mr. Insinna stated they are currently in the process of negotiating with two estimates with construction companies. They were hoping that the cost would fall between the \$40-\$45,000 range, but both estimates have come in a bit higher.

ACTION

Motion by Raymond Skaine to **approve** Appeal No. 5 as written, seconded by Ryan Mills.

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

MOTION CARRIED

Appeal No. 6

Maron H. Carrubba
Restricted Business

Requests the Board of Appeals approve and grant a variance to allow a residential use located at 8160 Sheridan Dr.

Appeal No. 6 is in variance to §229-76.

DISCUSSION:

Two neighbor notifications on file, neither are signed. The neighbors from 8150 are present at the meeting.

Mrs. Carrubba's family has owned the vacant land property at 8160 Sheridan Dr. which has been there since the 1960's. They put it up for sale in 2017, then recently several people have gone to the Planning and Zoning Dept. to find out about purchasing the property, and what they may be able to build on it in regards to houses, etc. They were told that the property had been rezoned with no notification to her regarding the rezoning. They were told the property was zoned for business only, not residential. Mrs. Carrubba said they were informed that the reasoning was because the lot is so narrow. They then took the property off the market. Because it's a narrow piece of land, surrounded by 4 residential homes, it would be difficult to sell as a commercial property. She was hoping to regain the original variance that allows her to sell to build a home on, and / or a business, like it once was. According to town records, it is

100x473. She would like to have the property rezoned so that she can sell it for a residential purpose. 8160 Sheridan was separated from 8150 three years ago so that Mrs. Carrubba could sell it as a vacant lot.

Mr. Callahan confirmed that it is a pre-existing, non-conforming lot on record, so it is a good lot. Her family has owned both properties since 1955, she split the parcels in 2017.

Mr. Callahan stated that on March 11, 2020 the zoning was not changed, it is still Restricted Business, which it became in 2005. Restricted Business Zone always allowed Single Family Residential for permanent use. The town, in contemplating Sheridan Drive going forward, as well as Main Street, identified that single family residential and two family residential in that zone would not be a preferred use. The town would like to encourage commercial growth.

Mr. Mills asked if they granted it for Residential Use, can they still use it for Restricted Business also, Mr. Callahan confirmed yes. Mr. Callahan would not recommend only making it residential, and removing the business aspect of it. The position of the town board is to encourage commercial properties in the Town of Clarence, so anytime we can preserve a commercial property and get a commercial tax base, absolutely they will attempt to do it, but in this instance, the applicant does make a point.

Mrs. Burkard asked if they approve this variance, can they only build one single family home, or a duplex. Mr. Callahan stated that it can be conditioned to limit the use. There may not be room to build more than a single family home.

ACTION

Motion by Raymond Skaine to **approve** Appeal No. 6, seconded by Richard McNamara with the following stipulations:

- A single family home for the residential component
- It does not change the underlying zoning

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

MOTION CARRIED

Meeting adjourned at 8:36 motion by Raymond Skaine, seconded by Richard McNamara

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

This meeting will be taped.