

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday August 12, 2014
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:11 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik Vice-Chairman Ryan Mills
David D’Amato Patricia Burkard
Richard McNamara

Zoning Board of Appeals members absent: Gregory Thrun

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Robert Geiger

Other interested parties present:

Michael McLaughlin Trish Fabozzi Jim Bielmeier Nick Fabozzi
Mark Russell Dick Klenk Tom Grolemond F. S. Gaulin
Richard Ejnik Frank Menza Marie Menza Pam Armstrong
Dawn Trippie Ken Thompson Tammy Bowers Eloise Gardner
Janet Cooper Susan Dudek Caroline Berger Jim Gaynor
Bonnie Gaynor Rose Sickler Charles Sickler Thomas Goebel
Christine Goebel Thomas Klebes Alan Kurtzman Helen Klebes
James Armstrong Madeline DuBea Hans Mobius Gary Horvatits
Chris Bowers Dave Haney Kim Tsakiris Lisa Haney
Deirdre D. Booth Gerald Drinkard Thomas Palmer Pauline Gebura
John Gebura William Moses Frederick S. Gaulin

New Business

Appeal No. 1

CEC Energy/Ryan Storke
Residential Single Family Zone

Requests the Board of Appeals approve and grant an 80’ variance to allow for the construction of a 140’ wind turbine located at 8850 Clarence Center Road.

Appeal No. 1 is in variance to §173-4(C).

DISCUSSION:

Madeline DuBea is representing CEC Energy and explained that they are requesting the variance because that way they are able to obtain the most efficient wind quality to power the turbine and supply energy to the Thompsons.

Dawn Trippie and Ken Thompson own the property, Ms. Trippie explained they want to power their greenhouses with the turbine. After a one year investment on their part, their greenhouses will be self-sufficient for electric. She said they are in an Agricultural District and a wind turbine is considered a farm agriculture building and part of farm operations and as long as it is being used for farming operations, which they are using it as such, it is their right to have one. Mr. Thompson said for those people who do not want it there can be sure that there won't be houses there because the wind turbine will be there for 20 years. Ms. Trippie submits guidelines for small wind energy production in NYS, the guidelines are from the Department of Agriculture and Markets. They will not be selling the energy it will only be used to power their farm.

Two (2) neighbor notification forms are on file.

Gerald Drinkard lives at 6035 Samantha Lane which is in the Amber Meadows Subdivision directly across the street from the proposed location of the wind turbine. He and the neighbors think the variance should be denied, it violates §173 of the local code as reasonable and generous in giving a 60' height. He outlined four (4) basic reasons the request should be denied in a letter that was sent to the Zoning Board of Appeals members. It is a sight issue, it changes the character of the neighborhood and will decrease the value of the surrounding neighbor's property. The sound is also an issue, per the manual that Mr. Drinkard read, the decibel increases out to the road as the turbine goes faster, the higher the turbine, the faster it goes and the louder it will be. The harmonic level changes as well, this is the sound frequency. This could be a very disturbing thing because of the small farm parcel that it is on. It is not in the middle of a huge multi-acre farm, it is close to Clarence Center Road and to Millcreek Drive on the other side. There are safety and welfare issues as well, they are clearly elaborated on in Local Law 173. At end of life what happens with the device? Local Law 173 speaks to this issue.

Pam Armstrong lives at 6789 Salt Road and has looked into installing a wind turbine on her property. She noted that the code addresses a 60' limit for residential properties, this is an agriculture/commercial property in which the height restriction is 150', not 60'. It meets all the stipulations according to the Agriculture and Markets Law. As far as wind, it is supposed to emit about 46 decibels which is about the same amount of noise that is emitted from an air conditioner that goes in a window. When it goes faster it does get little noisier but you don't hear it over the sound of the wind itself. The turbines are all installed deep into the ground. At the end of 20 years the wind turbine can be removed it is no longer used, the company dismantles it and takes it away.

Tom Grolemond lives at 6052 Samantha Lane and said he has lived in a number of different locations and they have always built a new house. Any house near electrical wires or anything like that, the lots are always lower priced than any other place in the community. 44 new homes have just been built without that eye-sore there. A lot of their porches face that way. It will impact property values on re-sale. It is a noble cause but he is not willing to take a lower price when he tries to sell his house.

Dave Haney of 6125 Gott Creek Trail said he looked at installing a wind mill in the southern tier and one of the big things was they had to do an environmental survey for a number of years. They had to check

migratory patterns of birds, what would it do to the soils and the water table. He asked if any of these issues have been addressed with this proposal.

Ms. DuBea submitted a Short Environmental Assessment Form and noted that this form is completed online. The location is put into the online system, many of the results are pre-filled because the information is on-line, there were no issues with any of the items Mr. Haney questioned.

Chairman Michnik asked Mr. Callahan if a Short or a Long Environmental Assessment Form is required for this proposal. Mr. Callahan said as an Area Variance, it has been identified as a Type II Action. The Board could identify that there may be more stringent or additional environmental impacts associated with it and an Action under the State Environmental Quality Review Act (SEQRA) could be taken. The Area Variance itself is a Type II Action which requires no further input. It would be a Board decision if they want to pursue any further environmental disturbances.

Ms. Trippie said the Agriculture and Markets law touches on the Long Environmental Assessment Form and that it could be unduly restrictive and not cost effective for the farmers; it may not be necessary in this case.

Deirdre Booth lives at 6075 Samantha Lane. She said the contiguous properties are wetlands to the south of the property in question. She is not familiar with the Town of Clarence's laws regarding wetlands. There was an environmental impact study that was done when the subdivision was put in. As mentioned, there is a migratory pattern. She is familiar with the Short Form but feels a draft EIS is appropriate prior to the consideration of the variance.

Ms. Trippie said there are no wetlands on her property.

Richard Ejnik lives at 6063 Jessica Place, almost right across the street to where the windmill is proposed. He belongs to Emmanuel Baptist Church and a couple of weeks ago they were approached by someone who asked if they could locate a cell tower on the Church's property. The vote was unanimous in saying absolutely not, for the neighbor's sake. They did not want the neighbors to have to look at something that high at 100'.

Tom Klebes lives at 6014 Jessica Place. He knows that Thompson's nurseries have been there longer than he has, it is not the nicest property to look at. He has concerns as to whether this wind turbine would be kept up as there is a lot that isn't kept up on that property.

Lisa Haney lives at 6125 Gott Creek Trail and said, with reference to the water table, she knows there are three (3) ponds associated with Amber Meadows, two (2) are visible from Clarence Center Road. Both of them are down significantly with their water tables, she is not certain why. She would like to know if this request would affect the water table and create a serious issue just across the street.

Ms. DuBea said there should be no interference with any water tables. She submitted a plan with the typical foundation for this type of turbine which shows it as not very large. They have a geo-tech surveyor come in and drill a hole in the area where the turbine is going to be and will do ground testing. In terms of safety, the foundation is built based on the ground quality and make up at that location.

Dave Haney of 6125 Gott Creek Trail asked how deep the foundation is going to be. Chairman Michnik said the blueprint shows 6' in the center, 36" wide.

Susan Dudek, of 6083 Samantha Lane, said she would be looking at the wind turbine. She asked if the financial gain of one farm outweighs the financial investment of a whole community. Is this the vision Clarence has for its community?

Helen Klebes of 6014 Jessica Place asked how homeowners are notified of appeals. Mr. Callahan explained that, per the law, on a zoning variance notification is required by publication in a newspaper of general circulation. The applicant is also required to provide notification to immediate neighbors. In addition, a sign is put out in front of the property in which the variance is being requested. Legally, the only notification required is the notification in the newspaper. Ms. Klebes asked why the turbine has to be so high.

Tom Goebel of 6028 Samantha Lane said there seems to be many issues regarding this variance and wondered if the Town has had to deal with a similar request in the past. Is there a place one can see a 150' wind turbine already erected? Chairman Michnik said the only wind turbine in the Town of Clarence that he is aware of is in the Rivera Greens subdivision on County Road, that turbine is 60' high. Mr. Callahan confirmed that there are a few more 60' high turbines in Town. He noted that the law is clear in that 60' turbines are allowed.

Ms. DuBea of CEC Energy said she was informed that in Batavia on Route 63 there is a farm that has a 140' tower. She explained the reason for the variance is if the wind hits a tree it bubbles up and creates turbulence, at 140' they are able to gain the best wind to not create higher wind speeds or a reckless environment for the turbine, and it will stay at a constant decibel level.

Ms. Trippie said there are three similar projects in Newstead in which 2 permits have already been issued and the third one is in the process.

Richard Klenk of 8770 Haley Court asked if a 60' wind mill would suffice, could the applicant get by with this?

Lisa Haney, 6125 Gott Creek, asked what the size of the property is, she thinks it is very misleading when people say "farm" when the majority of the farm has homes on it and the greenhouse. How large is the size of the property not including normal parcel with the homes? Ms. Trippie said 20 acres. Chairman Michnik noted the 20 acres includes the greenhouse. Ms. Trippie said there are four (4) homes on the property that are not included in the 20 acres.

Tom Grolemond, 6052 Samantha Lane, asked how large the object is on top of the tower.

Mr. Mills asked why the same objective can't be achieved with multiple turbines in compliance with the Town Code. Ms. DuBea said the wind quality will not be as good at the 60' height because there are trees all around that site; the turbine will create louder noises at that level because it won't have a clear wind stream. Mr. Mills asked if the same amount of power can be derived from multiple turbines at the 60' height. Mr. Callahan clarified that the law allows one (1) turbine per lot. Mr. Mills asked if this windmill was brought down to 60' how much power would it generate. Ms. DuBea said it would not generate as much power because the wind would not be at the same level. There is a start up speed in which the wind needs to be at 7.5 mph in order to generate electricity that speed is better obtained at the higher height. Mr. Mills asked for confirmation that the windmill would power all the greenhouses on the site. Ms. DuBea said it is hopeful that the turbine will power all the greenhouses but most likely the wind turbine is not going to exceed any of the electrical usage so all the usage provided by the turbine will be used on site. There will be no additional power generated to be sold back to the grid; that is not possible. Ms. DuBea said if

the grid goes out, there is an automatic disconnect that if the unit senses that there is no grid power it will automatically shut down the turbine and not create electricity. Therefore it won't create any harm for any utility workers or anyone associated with the grid at that time. Mr. Mills asked how much difference in power generation there is between a 60' windmill and a 150' windmill. Ms. DuBea does not have a definite answer but believes it to be a significant difference. Ms. Trippie said part of the agricultural law allowing wind turbines to power a farm is that the device cannot exceed 110% of their usage for the year, so she is not making any money on this selling it back to the grid. Mr. Mills asked Ms. Trippie if she knew the difference in the power that is generated between the different heights, she did not know. Ms. Trippie said her property is in an agricultural district, NYS and Erie County certified, they are grandfathered in to agriculture protected by all the Right-to-Farm laws. Mr. Callahan clarified that locally the property is zoned Residential Single Family, it pre-exists as an agricultural use and it is in the Erie County Clarence/Newstead Agricultural District. Mr. Mills referred to the Town of Clarence Official Zoning Map which shows the current zoning is Residential Single Family. Ms. Trippie said they are grandfathered in because the property has been in her husband's family for 150 years. The open land on the property is certified by NYS as support land for the greenhouses, there is a drainage pond on the property. Mr. Mills asked if there are any other plans for more single family homes on this property. Ms. Trippie said no.

Mrs. Burkard asked what the cost of this project will be. Ms. Trippie said it will be \$14,500, she referred to Federal Government Grants and said the overall cost of the wind mill is approximately \$100,000. Her average electric bill is \$1,015 per month. Mrs. Burkard has a real concern regarding the sound of the turbine. She saw a similar structure near Lake Ontario, it is very large and it was only 120'. She understands the benefit to the applicant. She spoke with the owner of the structure near Lake Ontario who has both wind and solar powered energy. That owner said, by far, he prefers the solar energy. He said the problem he is having with the wind mill is the noise, it sounds like a helicopter. There should be a 100% drop zone. Ms. DuBea said they are 1.5 times all drop zones, so if the turbine was to fall it would never fall on any neighboring properties. She has no knowledge of any wind turbine falling down; she noted that there is scheduled maintenance on the turbine so it is constantly being monitored. She believes the maintenance is part of the lease that is signed with United Wind and it is contracted out. Ms. Trippie said CEC Energy will pay for the maintenance for the first 20 years. At the end of the lease, Mr. Trippie will either renew the lease or become responsible for the maintenance. Mrs. Burkard asked what happens if the applicant decides they don't want the wind turbine anymore within the 20 years. Ms. DuBea said they would remove it. Mrs. Burkard asked if there is a guarantee regarding how much power will be generated. Ms. Trippie said she provided three (3) years' worth of utility bills to CEC Energy and they matched it up with a wind turbine that will produce 90%-95% hopefully 100% of their usage. Mrs. Burkard asked what if that doesn't happen. Ms. Trippie said she would have to then buy some from NYSEG. Mrs. Burkard voiced her concern with the location of the turbine, it is right in the middle of a residential neighborhood. She asked if the noise increases the faster the wind goes. Ms. DuBea said yes. Mrs. Burkard asked if Clarence is windy enough to power a wind turbine. Ms. DuBea said yes, the wind quality is great in this area because of the lake. The blades on this wind turbine are 11' long. Mrs. Burkard asked what prevents children from climbing the wind turbine. They can remove up to 12' of the climbing pegs at the base of the unit. There will be signs located at the bottom of the unit noting "danger" for a climbing risk and "shock" potential.

Mr. D'Amato clarified that the actual motor is at 140' high, but with the blades the height is approximately 153'. There are guard wires on this unit. He asked why the unit is not free standing. Ms. DuBea does not know. Mr. D'Amato asked if the turbines in Newstead will be free standing, Ms. DuBea said they will have self-supporting lattices. Mr. D'Amato asked how many turbines CEC Energy has installed in the Western New York region. Ms. DuBea said approximately six (6) at the 153' height and one (1) at the 60' height. There will not be a fence around the turbine. She has heard the machine and said it is not anything worse

than an air conditioner. There is a scheduled maintenance for the wind turbine that comes with the lease, she thinks the first check will be a month from installation and every 180 days thereafter; the maintenance will be continuous throughout its lifetime. The cost difference between the 60' and the 153' wind turbine is significant. Mr. D'Amato confirms that technically the property in question is zoned residential.

The wind turbine guidelines that were submitted are on file and labeled Article 1. The letter that Mr. Drinkard is also on file and is labeled Article 2. Photos that were discussed are on file as well.

Chairman Michnik asked what size of the parcels are of the six (6) 153' wind turbines that have already been installed. Ms. DuBea said some parcels were similar in size to this request and some were much larger. The properties that she is working with now are about 16 acres in size. There are some located in farming communities which are made up strictly of farms. There are also some turbines in communities with a mix of farms and homes.

Ms. Trippie said her property is 100% solar, unfortunately there is not a way to harness that energy efficiently to power the place at night. Solar panels would be inefficient and far more costly than a wind mill.

Chairman Michnik voiced his concern with the noise issue. He also noted that there was only one (1) stake at the property which made it difficult to visualize it.

Mr. McNamara asked if the applicant considered making this a cell tower, too. Ms. Trippie said she doesn't know if that is allowed in the agricultural district. She has no interest in that, anyway.

Mrs. Burkard asked if any of the turbines that CEC Energy have already installed were located in a residential neighborhood with homes as close as these are. Ms. DuBea said no. Mrs. Burkard pointed out that because there are no turbines currently located in a similar residential neighborhood, there is no way to know if the neighbors will complain of the noise.

In response to Mr. D'Amato's question on how quick is the applicant looking to put up the turbine, Ms. Trippie said it was supposed to be up a month ago. Mr. D'Amato then asked how long it would take to install if the request was approved. Ms. DuBea said concrete needs to be poured and there is a month's cure time for that, the wiring will depend on the utility company and will usually be commissioned within a week. The sections of the wind turbine are assembled on the ground and then a crane is brought on property to drop the sections into the foundation. Mr. D'Amato asked if the applicant explored the option of a 60' wind turbine. Ms. Trippie said no, the energy company told them this is what would work for them. Mr. D'Amato suggested the applicant ask for the request to be tabled and explore other options, then come back to the Board better prepared to answer the questions the Board had. They should find out if a 60' wind mill would work. Ms. Trippie said she will go with what the energy company tells her she needs.

Mr. Mills asked Ms. Trippie if she is aware of another location where a windmill of this height was placed so close to a community of single family residences. Ms. Trippie said no.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **deny** Appeal No. 1 for the following reasons:

-the Board is asked to look at Town Law §267 when analyzing a variance, the first item to review is whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property will be created by the granting of the variance. The testimony from this meeting indicates that the height of the wind mill will create an undesirable change in this residential single family area providing a detriment to nearby properties based upon aesthetics, noise, potential migration amongst animals and issues with the water table.

-the second item to be reviewed by the Board is whether the benefit sought can be achieved by some method feasible for the applicant to pursue other than the variance. There are other feasible methods to obtain the same results, possibly solar, possibly smaller windmill height and/or different energy resources.

-the third item is whether the requested area variance is substantial. Based upon the testimony and the requested variance, an excess of 80' would be deemed substantial.

-the fourth item is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of any neighborhood or district. The testimony heard at this meeting along with the information provided indicates that there will be an adverse physical and environmental impact on the nearby neighborhoods and homes based upon the height, the aesthetics, the sound, potential migration of animals, water table and safety.

-the fifth item is whether the alleged difficulty was self-created. It is self-created because the particular parcel has been in place for some time, the applicant has existed without the variance request. The testimony indicates that the district of this parcel, while utilized for farming, its current state is very close to a large number of residential single family homes. There is nothing in Clarence, nor in nearby communities, that would demonstrate so many single family parcels so close to a structure this tall and this high.

For the reasons stated above this request should be denied. This particular request is different from other variances of this nature.

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

MOTION CARRIED.

Appeal No. 2

John and Pauline Gebura
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 300 square foot variance to allow for the construction of a 500 square foot detached accessory structure at 6471 Deerview Court.

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

DISCUSSION:

John and Pauline Gebura are present.

Chairman Michnik noted there are seven (7) neighbor notification forms on file.

Mr. Gebura said he is requesting the variance because they need more storage, he doesn't think two smaller structures will serve the purpose. He would like to store his 15' canoe, which is currently stored on a converted swing set that they would like to get rid of. They have a lot of lawn maintenance equipment, a snowmobile. He does not think the smaller shed-type structures will work. They have a large parcel which is over an acre, the other properties on the cul-de-sac are all 2+ acres. They built and bought the house 19 years ago with the intention of building something there.

Mrs. Gebura would like to park her car in the garage.

Mrs. Burkard asked the applicant why he does not want to go back any further. Mr. Gebura said it can't go to the back of the property because there is a natural gas pipeline right-of-way. They talked to their neighbors and it was their preference that it be more up front because they have a pool and a patio area and they would rather have it closer to the house and the driveway. The size of the garage is 20' x 25'.

Mr. D'Amato asked if the applicant could get away with decreasing the size of the proposed garage. Mr. Gebura said they made a list of all the items they need to get in storage and they could not fit it in anything smaller than what is being proposed. His wife wants a gardening bench on the inside of the structure; they do a lot of gardening. The construction materials will match the house. They have not selected a contractor yet because they were waiting for the variance to be granted.

Mr. Gebura said the other shed will eventually be removed, it has been there 17 years. The neighbors at 9622 Deerview said they do not have a problem with the request.

Chairman Michnik voiced his concern about the size of the proposed structure. Mr. Gebura said a 5' reduction would be insignificant from an appearance standpoint, yet what it could hold would be substantially less. Mrs. Gebura said they have no intention of putting a pool in their backyard, she noted that most of their neighbors have no green space in their backyards because they have pools that take up the whole yard, and/or patios. This garage would still allow for green space. Mr. Gebura said there will be no vehicles stored in this garage.

Mr. Mills asked if the applicants considered an attached third car garage. An attached structure would allow for a larger structure without the need for a variance. Mr. Gebura said they looked into the possibility of an attached third car garage, but they could not add it on the back because the family room is there with a corner fireplace. They want to be able to pull a pick-up truck around the back so they can dump soil for all the gardening that they do. Mr. Mills suggested a rear garage door but Mr. Gebura said they prefer not to do that because they're going to have so much stuff in there and that was not the plan they presented to the neighbors. The plan they presented to the neighbors was acceptable, they all approved and seemed pleased with the plan. The neighbor notification forms included positive comments with no objections. Mr. Gebura attached his layout and concept plan of the building when he sent out the neighbor notifications.

For the record, Mr. Gebura submitted a hand drawn exhibit of the structure, labeled Exhibit One.

Mrs. Gebura stated that when discussing the structure with the neighbors, several of the neighbors asked that none of the trees be removed. The current plans leave all trees as they are.

ACTION:

Motion by David D’Amato, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D’Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED

Appeal No. 3

Patricia Fabozzi
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 456 square foot variance to allow for the construction of a 728 square foot attached garage at 8200 Pinestone Court.

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

DISCUSSION:

Nick Fabozzi of 8200 Pinestone Court is present and noted the reason for the request is because they have children that are driving now, with another one a few years away from driving age. They will put a room on top of the garage to accommodate the children when their friend’s visit. They have a lot of outdoor furniture that needs to be stored.

There are three (3) neighbor notification forms on file. Mr. Fabozzi pointed out where those neighbors are in relation to his property on a survey of the property, that document is on file at Exhibit 1.

Mrs. Burkard asked if the proposed structure will have brick in the front like the house, Mr. Fabozzi said yes.

Mr. D’Amato asked Mr. Fabozzi how long they have lived there, Mr. Fabozzi said twelve (12) years. Mr. Bielmeier, who is present, will do the work and will start immediately if the request is approved.

Mr. Mills stated that there seem to be some others in the neighborhood similar to this, including some on Pinestone Court. They’ve incorporated a similar breezeway structure. Mr. Fabozzi confirmed that only the front portion of the structure will be brick, including the front upper peak. Mr. Mills asked if there will be any type of business operated from the second floor loft. Mr. Fabozzi said no, it will be a normal dry walled room used for the kids and for some storage. There will be furnace heating with a separate heating source. The back will have a covered patio, which is coming off the current home already. Mr. Mills asked if the applicant could get away with any less square footage and still achieve parking for two (2) cars inside the garage. Jim Bielmeier said the staircase takes away some space, so they made the structure a bit wider. The back part with the bathrooms also takes up space, so when you put two cars in there, basically that’s the size of a two car garage with six feet across the back for storage. This is the minimum that fits the Fabozzi’s needs. There will be no means of access to the structure other than through the breezeway. Mr.

Mills asked what the estimated cost of the structure might be. Mr. Beilmeier said the cost would be \$60,000+.

Mr. McNamara asked for confirmation that the second floor would strictly be a recreation room, not living quarters. Mr. Fabozzi said yes, it will be a recreation room for his kids and their friends to hang out in, it will not be a living space. Chairman Michnik asked if Mr. Fabozzi would state for the record that there would be no living space on the second floor at all, not even in the distant future; this may be made part of the motion. Mr. Fabozzi said they have no plans for the second floor to be a living space ever. No one would sleep there. Deputy Town Attorney Steve Bengart asked if Mr. Fabozzi if he was amenable if there is a condition put on the approval that the addition will not be used as an overnight residence. The Fabozzi's have no problem with that condition.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 3, as written, with the exception that the recreation room above the garage is strictly a recreation room, no living space, no living quarters, no bedrooms, no apartments, no in-law set up, no rental and no place of business.

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

MOTION CARRIED

Appeal No. 4

William Moses
Agricultural Floodzone

Requests the Board of Appeals approve and grant a variance for the placement of a pond lacking the appropriate design standards, setbacks and parcel size located at 9209 Tonawanda Creek Road.

Appeal No. 4 is in variance to §93-19.

DISCUSSION:

William Moses is present and explained that he is looking to obtain a variance for a small pond that measures 20' by 30' when it is full. He has less than the required minimum acreage for to apply for a Pond Permit, as such they wouldn't have the minimum distance to be from their property line for the placement of the pond. As far as the design standard, the minimum depth for a pond in Clarence, from what he understands, is 6 feet and there's a required angle for the grade of the banks, so to have a small pond it wouldn't be able to be 6 feet, it would need to be larger in order to be at that depth.

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

Christopher Bowers of 9205 Tonawanda Creek Road asked how many Board members actually looked at the pond. It is noted that all members of the Board saw the pond. Mr. Bowers said he did an inspection on the pond last night and has some concerns. He said it doesn't appear that the property size is large enough to support the pond. The pond was at approximately 3' depth, 50% or less of volume and considering how rainy July was, it appears that the amount of water shed available to keep the pond at a usable level is minimum. The biggest objection he has is that this is a 'C' lot, therefore the front of the house drains to the

road and the back of the house drains away from the property into the adjoining property behind it. Therefore anything behind the house drains towards the pond, which is where the water fall area and the hen house are, and also there appears to be a manure storage there as well. Therefore any water draining into the pond is not only stagnant, it's also foul. Mr. Bowers thinks the biggest issue is that the property doesn't have proper drainage so if there is excess water there is no drainway or spillway for it. Any spillage off the applicant's property that doesn't go onto Mr. Bowers's property goes onto the next neighbor's property.

Eloise Gardner lives at 9215 Tonawanda Creek Road and noted that she submitted a letter to Timothy Lavocat regarding the request, the letter is on file. She agreed with Mr. Bowers and all the concerns/issues he raised. Ms. Gardner said the applicant does not meet any of the criteria as far as acreage or distance to the property line. She saw the pond last night and was appalled by the condition of it. She believes that any drainage from that pond will go into her ditch and it would be contaminated with water fowl waste. Her opinion is that the pond should be filled in.

Chairman Michnik said there has been an appearance ticket issued to William Moses in reference to the pond. Mr. Moses is informed of this; it was served by the Town Engineer, Timothy Lavocat. Deputy Town Attorney noted that the appearance ticket matter has not been adjudicated yet, the first appearance for that is scheduled for August 28, 2014.

Mr. Moses said through his discussion with Mr. Bowers he found that there are aerators he can install to keep the pond from being stagnant. There is natural beneficial bacteria that can be added to the pond until the ecosystem around the pond grows in; right now it is bare. The bacteria that can be added will breakdown any negative or adverse bacteria that might exist in the water.

Mr. McNamara asked when the pond was put in. Mr. Moses said last Fall and he did not obtain a permit for it because his interpretation of the Code was that a pond is anything over 6'. He did not want a pond, he just wanted a place for his ducks and geese to swim. He made numerous phone calls to find out what it is considered if it is less than 6' and the closest answer he could get was from the DEC in which they would consider it a marsh that was constructed for a habitat for waterfowl. There was not any permitting that the DEC was aware of for this marsh. Clarence code does not have any requirements for constructing anything less than 6'. Mr. McNamara asked if Mr. Moses looked at setback requirements. Mr. Moses said he only looked at the code which indicated anything less than 6' does not require a permit. Mr. McNamara asked if Mr. Moses obtained any design help when installing his marsh. Mr. Moses said he followed the grade that was required for a pond and that was the extent of the design considerations.

Mr. Moses said he has just under two (2) acres. It is clarified that he wants the variance to be granted so he can put a pond on a two (2) acre lot. Mrs. Burkard asked what will happen when in the winter there is a lot of snow that is going to melt in the Spring and run off his property. Mr. Moses said the ground around the pond is higher than the rest of his property and his neighbors lots, so if the pond is at its bank the rest of the yard and woods behind him are all inundated as well. There is no culvert directing water into the pond where it would then spill over into the woods, but he understands that a spillway would be a requirement as part of the pond permit process.

Mr. D'Amato noted the conditions under which the notice of violation was issued to Mr. Moses, and clarified that it was served to him. Mr. Moses said he spoke to Tim Lavocat on several occasions about the situation and he told Mr. Lavocat that he did not feel it was a pond because it was less than 6'. Mr. Lavocat was responding to a complaint from a neighbor indicating Mr. Moses did something he wasn't supposed

to. Mr. Moses said Mr. Lavocat wasn't the person to comment on whether or not the pond was out of compliance with regards to the pond being less than 6'. Mr. D'Amato noted that another letter was sent to Mr. Moses on May 19, 2014 saying he needs to take corrective actions by July 15, 2014. In response to that letter Mr. Moses called Mr. Lavocat to ask him what corrective actions he needs to take. Corrective action was not taken by July 15, 2014 so Mr. Moses was given a court date. The variance request is the corrective action. Mr. Moses has approximately 21 fowl in his yard. Mr. D'Amato asked why a kiddie pool wouldn't work. Mr. Moses said they had one for a while but it has to be completely emptied and filled every day and it got to be too much. The pond is definitely better/healthier for the ducks.

Mr. Mills asked if the applicant considers the ducks pets. Mr. Moses said yes, they do not eat the ducks. Some of the ducks are rescue ducks in which they are nursed back to health and then returned to the SPCA. Mr. Mills asked in what other way this objective can be achieved. Mr. Moses said if the variance is not granted they would have to go back to filling kiddie pools. Mr. Mills asked about a pool with a type of filtration system, Mr. Moses said he has not looked into that. Mr. Mills asked if the variance was granted would Mr. Moses be willing to bring his pond into compliance with all the current Town code requirements including slope and size. If they had to approval to apply for the pond permit, they would ask that the pond requirement of 6' be waived, they don't want to go that deep because with the grade that the Town would require he would have to widen the pond as well. The depth of the pond, the size of the lot and the distance to the property line are requirements that would not be brought into compliance.

Mrs. Burkard asked what the distance from the pond would be to the neighbor's property line. Mr. Moses said it is 10'. Mrs. Burkard said it is supposed to be 100'. Mr. Moses said his lot is only 190' wide, it is 1.9 acres, so he wouldn't be able to do 100'. He does not have the option to purchase any more property at this time.

Chairman Michnik suggested the applicant ask for a tabling of the request and do some research on other options, perhaps a decorative pond. Mr. Moses thinks he would run into the same issues. Mr. Mills suggested the applicant look at what constitutes a pool versus a pond. Mr. Moses thinks he would be back in for a variance even if he looked at a pool as an option. He said the location of the pond is not visible from either neighbor, it does not affect either neighbor's drainage.

Mr. Mills noted that the Board looks at Town Law §267 when considering a variance. Mr. Moses said the two other neighbors closest to his property both have multiple ponds on their property so he sees his request as keeping with the character of the neighborhood. One of those properties is in excess of 5 acres but the other one is not. Mr. Moses does not feel that his request violates any of the criteria the Board looks at in §267. Other than building a pool for ducks and geese to swim in he does not think that he can accomplish what he is attempting to in a way other than receiving the variance to apply for a permit and work with the Engineering Department to make the pond healthy and have the proper drainage.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills, to **deny** Appeal No. 4 as written for the following reasons:

- the request does not conform with existing code which states the pond must be 100' from the property line.
- at minimum, the parcel must be a 5 acre lot.
- the applicant built the pond without a permit.

- there are other ways the desired outcome can be achieved such as smaller pools.
- the evidence and testimony establishes that an undesirable change in the character of the neighborhood will be created, specifically the pond is situated so close to the lot line at 9215 Tonawanda Creek Road as to change the character of the neighborhood.
- the applicant's testimony was that this could be achieved by other methods such as a pool or other portable water holding structures.
- the area variance appears to be substantial based upon materials in the record as well as testimony in that the setback is 10' and the code says it should be 100'.
- the difficulty seems to be self-created in that the applicant is seeking to add a pond to the structure.
- it creates an adverse impact on the neighborhood in that it is so close to nearby parcels and does not conform with the side yard setback.

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

MOTION CARRIED

Appeal No. 5

Rick Gaulin
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 7' variance to allow for a 38' front yard setback for the construction of a proposed attached garage at 5275 Old Goodrich Road.

Appeal No. 5 is in variance to §229-52(A)(3).

DISCUSSION:

Frederick S. Gaulin Jr. is present and explained that he wants to add garage space because he has an extra vehicle that he would like to store. Within the next 15 years most of the existing attached garage will be turned into a family room. He would like to get the square footage of his house to 1800 square. There are two (2) neighbor notification forms on file.

Mrs. Burkard voiced her concern that the proposed garage is going to be sticking out further than others in the neighborhood. She asked if the same objective can be achieved by extending the existing garage. Mr. Gaulin said there is not enough room on the property for that layout. The lot is 204' deep. Mr. Gaulin had a concrete patio put in behind the house two (2) years ago, it cost \$2500 and would have to be chopped up if he put the attached garage there. The siding will match the house and it will be a two and a half garage. Mr. Gaulin would like a 20' x 24' garage addition that would come out perpendicular to the existing garage.

Mr. McNamara asked if the applicant would consider planting pine trees on the south property line to help block the view of the garage for the neighbor to the south. Mr. Gaulin said he planned on landscaping the garage by putting a flower bed in and some window boxes. It is proposed to be 24' off the side property line.

Mr. Mills asked if the addition will function as a four (4) car garage for a while. Mr. Gaulin said yes. Mr. Mills asked if the applicant knew how close his southern neighbor's house was to the road. Mr. Gaulin said his neighbor's four (4) foot porch is closer to the road than Mr. Gaulin's house is.

Mr. Gaulin is looking to have the garage addition done by November 1, 2014. He would like to put in a flower bed 3' wide along the edge of the garage that will include some floral fauna and some higher flowers.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **approve** Appeal No. 5, as written with the condition that within six (6) months after the temporary Certificate of Occupancy is issued landscaping must be installed, weather permitting, as Mr. Gaulin described above as a floral flower bed on the south side of the garage addition. The landscaping is to be acceptable to the neighbor, as well.

ON THE QUESTION:

The condition is acceptable to Mr. Gaulin.

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

MOTION CARRIED

Appeal No. 6

Gary and Judy Horvatits
Residential Single Family Zone

Requests the Board of Appeals approve and grant a 240 square foot variance to allow for the construction of a 440 square foot detached garage located at 4920 Cliffside Drive West.

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

DISCUSSION:

Gary and Judy Horvatits are present.

Two (2) neighbor notification forms are on file.

Mr. Horvatits said they are looking for more storage, their existing garage is full with lawn equipment, a dirt bike and a classic car. He would like to put his car in the garage in the winter. The alternative would be to store items in the back yard and put a tarp over them and that would look bad; he wants to do it right.

Mr. D'Amato asked if the garage will be used to store vehicles, Mr. Horvatits said yes, and lawn equipment too. Mr. Horvatits owns five (5) cars, 2 of which are classic cars. He stores one of the classic cars in his garage and he rents a place to store the other one. Mr. D'Amato asked if the applicant explored the option of attaching the garage to the house. Mr. Horvatits said yes, but it wouldn't work because there is a brook that runs down from the escarpment and there is an easement there and if he goes to either side of the house then he gets too close to the property line. There will be no driveway to the proposed garage. There will be no business operated from this proposed garage. It is strictly for storage and personal use. The proposal is for a 20' x 22', the smallest Mr. Horvatits could live with is an 18' x 18' structure. He plans on landscaping around the structure so it looks nice of the neighbors. He has lived at this residence since 1993.

Mr. McNamara voiced his concern about the size of the garage, with all that the applicant wants to store in the structure, he suggested leaving it at 20' x 22'. He would like to see some plantings so that when a vehicle comes down the street the structure won't be seen. Mr. Horvatits is concerned about the size of the door, it is suggested that he decrease the size of the door to 8' or 9'. The structure will have the same siding and roofing as the house. The construction would begin later this year.

Deputy Town Attorney Steve Bengart asked if the applicant would agree to conditions stating there would be no driveway put in to get to this garage, and that landscaping would be installed within six (6) months of the issuance of the temporary Certificate of Occupancy, weather permitting. Mr. and Mrs. Horvatits agreed.

Selina Smith, of 8955 Cliffside Drive South, voiced her concern regarding drainage because she is the low part of the property. She asked if the existing shed is going to be removed.

Deputy Town Attorney Steve Bengart said anytime anything is constructed the Town Engineer would be involved in the drainage plan to make sure it properly drains.

The other structure is hidden by trees in the south corner of the backyard, it will remain to store patio furniture.

ACTION:

Motion by Richard McNamara, seconded by Daniel Michnik, to **approve** Appeal No. 6, as written with the condition that landscaping be installed on the north side of the structure. The landscaping will consist of three (3) to five (5) evergreens. No driveway is to be constructed from that structure to any part of the property, or otherwise. Landscaping is to be installed within six (6) months of the issuance of the temporary Certificate of Occupancy, weather permitting. The existing storage shed shall remain on the property.

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

MOTION CARRIED

Motion by David D'Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on July 8, 2014 as written.

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

MOTION CARRIED

Meeting adjourned at 9:24 p.m.

Carolyn Delgato
Senior Clerk Typist