

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday August 8, 2017  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:03 p.m.

Zoning Board of Appeals members present:

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

Zoning Board of Appeals members absent: Patricia Burkard

Town Officials present:

Assistant Director of Community Development Jonathan Bleuer  
Deputy Town Attorney Steven Bengart

Other interested parties present:

Paul Maly     Charles Lukowski     Bryan Schaefer

Motion by David D'Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on July 11, 2017, as written.

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

MOTION CARRIED.

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:04 p.m. The session ended at 7:10 p.m. and the Zoning Board of Appeals meeting opened.

### New Business

#### Appeal No. 1

Jonathan and Lisa Bialek  
Residential Single Family

Requests the Board of Appeals approve and grant a 1.5' variance to allow an 8.5' side yard setback for the installation of a detached accessory structure (emergency generator) located at 5697 Martha's Vineyard.

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

**DISCUSSION:**

Paul Maly is Mr. Bialek's father-in-law and is representing Jonathan and Lisa Bialek. Mr. Bialek is out of town on business. There is a letter on file giving Mr. Maly the authority to act on the applicant's behalf. There are three (3) neighbor notification forms on file.

Mr. Maly said the proposed location is the only place they can put it because of the windows, the instructions for installation indicates that they have to be a certain distance away from windows. An electrician will be installing the generator, which runs on gas. Mr. Maly said the generator turns on once a month to lubricate and keep the oil moving through the machine. It will run approximately 10 minutes. The Bialek's have lived there for four (4) years. They do not want shrubbery around the generator. Mr. Hickey said the neighbors might want shrubbery for aesthetics. Mr. Maly said the neighbor did not mention anything about covering up the generator.

Mr. Mills asked if the applicant has explored all other locations and have found this to be the only feasible location. Mr. Maly said yes and submitted documentation regarding the site selection and preparation of the generator, Exhibit A. It is the only location that is closest to the electrical box and the where the gas comes into the house, this makes it more convenient from a cost perspective.

Mr. Michnik voiced his concern saying he did not see the gas meter on that side of the building. He suggested putting the generator in the back by the driveway area where it is out of everybody's way and would not need a variance. He went on to say shrubbery planted around the generator may be required by the Board. Mr. Maly is in agreement if that is a condition. Mr. Michnik is not a fan of the generator being on the side of the house, because there are other options. It may cost more to move it in the back but it may serve to benefit. There is a letter on file from the neighbor saying they are ok with the proposed location of the generator. Mr. Maly said there are a lot of windows and sliding doors on the back of the house. He said if the Board would prefer he put bollards around the generator they are willing to do that.

**ACTION:**

Motion by Jonathan Hickey, seconded by Ryan Mills to **approve** Appeal No. 1 as written with the condition that within 30 days of installation of the generator the owners plant/install greenery or landscaping that is a minimum of 6" taller than the top of the generator and is placed on the side that faces the neighbor and the side that faces the street.

**ON THE QUESTION:**

Mr. Maly asked if the buffer around the generator has to be shrubs, or could it be a plastic fence? It is clarified that the buffer should be natural live shrubbery or greenery. Mr. Maly understands.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

**MOTION CARRIED.**

**Appeal No. 2**

Charles Lukowski  
Residential Single Family

Requests the Board of Appeals approve and grant a 7' variance to allow a 5.5' side yard setback for the construction of an attached accessory structure (garage) located at 8470 Ericson Drive.

Appeal No. 2 is in variance to §229-52(B).

**DISCUSSION:**

Two (2) neighbor notification forms are on file. Mr. Lukowski is present and explained that he needs a detached garage so he has direct access from his garage. Currently he has a ramp from the house to the garage but in inclement weather it is hard to shovel it.

Mr. Mills asked the applicant when he plans on commencing construction. Mr. Lukowski said as soon as the Board approves it. Mr. Mills asked if the garage will be vinyl sided. Mr. Lukowski said he is not sure.

Mr. Lukowski has lived there for 25 years and plans on living there for the rest of his life. He lives there alone. The estimated cost of the project is \$28,000.

Mr. D'Amato asked what the existing garage in the back is used for. Mr. Lukowski explained that it was a utility shed that rotted out, it is now a storage shed. There is a plastic shed that is used for garden chemicals. There is also a metal shed on his property that will be tore down.

Chairman Michnik asked if concrete will be poured from the back of the garage to the oversized storage shed. Mr. Lukowski said yes. There will be a garage door in the front and some type of door in the back of the structure.

Mr. Hickey asked if there is another feasible way to accomplish what Mr. Lukowski is looking to do. Mr. Lukowski said no and went on to explain that he has a van that is 17' wide and it has a 5' wide ramp on it, then there needs to be room for his wheelchair. Mr. Lukowski also explained that he is a right-leg amputee confined to a wheelchair. He has a handicap van with a 5' ramp on the side. He needs another 4-5' to navigate his wheelchair. Mr. Lukowski is 75 years old.

**ACTION:**

Motion by Jonathan Hickey, seconded by David D'Amato, to **approve** Appeal No. 2, as written with the condition that the metal shed and the car port will be removed from the property.

**ON THE QUESTION:**

Mr. Lukowski understood and agreed with the condition. Mr. Hickey said this is not an undesirable change. There has been evidence and testimony to show that there is no alternate feasible method for the applicant to accomplish what he needs to receive the benefit. The difficulty was not self-created. The unique and rare circumstances of Mr. Lukowski would reveal a much greater benefit to him if granted, as opposed to a detriment to the health safety and welfare of the community.

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

MOTION CARRIED.

**Appeal No. 3**

Bryan Schaefer/R2B Management  
Industrial Business Park

Requests the Board of Appeals approve and grant a 20' variance to allow a 60' front yard setback for the construction of parking spaces located at 9580 County Road.

Appeal No. 3 is in variance to §229-102(E).

**DISCUSSION:**

There are two (2) neighbor notification forms on file. Bryan Schaefer is present and explained that they are looking for additional parking to the front area to improve the safety and well-being of his company, his customers and the vehicles that travel up and down County Road. Mr. Schaefer said he is fortunate to have a growing business in the last 30 years, he is confident that they are the oldest building and the oldest company on County Road. They recently put on an addition to the building which includes a front entrance. They upgraded the building and have added landscaping. They want to put parking up front to keep people out of the line of traffic. This is not a request to set a precedent, he has pictures of his neighbors that have more parking in the front of their property than what he is asking for. There are businesses down the road where people park on the road or on the grass area in front of the building. Mr. Schaefer is asking to put a small paved area to accommodate parking for his business. He will not upset anything on County Road, he will not upset his neighbors, this is only going to help everybody. He went on to say that three-quarters of his employees live in the Town of Clarence, it is a good business for the Town. The people that put up the addition work, live and play in Clarence. He referred to the criteria that the Zoning Board of Appeals members look at when reviewing an appeal and he said his proposal would absolutely not be detrimental to the health safety and welfare of the community. As far as the benefit to the applicant, his employees and customers will be safer with it. \$22,000 is a big investment for a small company, his company has given to charitable organizations over the years such as the Baseball Club, the Soccer Club, the Clarence Band Association and Roswell Park to name a few. The location is in an industrial area, there are not houses in the area. He does not see that there will be any issues with his request.

Mr. D'Amato asked if the request is the same as the last time he was before the Board with the exception that now he has financial numbers to go with the proposal. Mr. Schaefer said yes. He also confirmed that the material used will be blacktop. Mr. D'Amato noted that Mr. Schaefer has lived without these spots for 30 years. Mr. Schaefer explained that when the company started in Clarence 30 years ago there were only six (6) employees. Mr. D'Amato asked what the average age is of the employees. Mr. Schaefer said there are 3-4 in their mid 20's, 3-4 in their mid 30's, and a couple in their 50's. Mr. D'Amato asked if there are any handicapped employees. Mr. Schaefer said not any more. Mr. D'Amato said so all the employees can walk. His building is handicap accessible. He will get 6-10 customers walking in the building daily, this includes UPS and truck drivers. This is not a retail operation, it is a wholesale operation where contractors or engineers will come into the building.

Mr. Mills said at the last meeting there was a discussion on how to mitigate the aesthetics of those front spaces, perhaps with a stonewall or more extensive landscaping. He asked if the applicant is willing to provide more aesthetic features if the front spaces are granted. Mr. Schaefer said he has the best looking building in the area, he doesn't see any other property with landscaping or the drainage that he has. The landscaping that he just did was over \$10,000. The stone wall would be impractical considering the layout of the property, it would cost over \$20,000, and he does not know where he would put a wall based on the parking and the drainage ditch. As far as more landscaping, they have nice landscaping there now, and he does not want to hide the building, so he doesn't know what the purpose would be for more landscaping. Mr. Mills said it would help mitigate some of the visual elements such as having those parking spots and those cars in the front of the building. Mr. Schaefer said none of the neighbors have it, Lavocat's Nursery doesn't have it, Groundhog's Landscaping doesn't have it. They will not have junker cars out there, they have well-paid employees who have nice cars.

Mr. McNamara said without the cars parking in the back can the tractor trailers back up and pull in front to do a 180. Mr. Schaefer said it will be tight but they could do it. Mr. McNamara suggested a small boxwood hedge 2' high in front of the parking to hide it a bit. Mr. Schaefer said he can't come out any further because the drainage pond is there but he may be able to connect the two landscaped islands that are there now.

Chairman Michnik asked what the hours of operation are. Mr. Schaefer said standard hours are 8am-5pm Monday through Friday. There is currently room for 10-15 cars on the left side of the building. Chairman Michnik said he was at the applicant's lot at 4:30pm yesterday and the front parking was full, but on the side there were six (6) cars and almost 15 empty spots. The parked cars were scattered which did not help the truckers. Chairman Michnik said the applicant has a way of correcting his problem by marking the spots and telling the employees where they should be parking. The employees can park in the side parking lot which would relieve the problems with the truckers going in and out correctly.

Chairman Michnik referred to the photos that Mr. Schaefer submitted which shows other businesses in the area with parking in the front. Chairman Michnik said parking in the front is against code and he asked Jonathan Bleuer to look into and enforce the code. Jonathan Bleuer clarified that pre-existing businesses with pre-existing lots have the right to park in front. Any new business would have to go by the new code which states no parking in the front. He will look into.

#### **ACTION:**

Motion by Richard McNamara, seconded by Jonathan Hickey, to **approve** Appeal No. 3, as written with the following condition: the three (3) front yard landscaping beds are to be connected and greenery/landscaping added. The greenery/landscaping is to be consistent with what exists on site.

Jonathan Hickey	Aye	Richard McNamara	Aye
David D'Amato	Nay	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Meeting adjourned at 7:54 p.m.

Carolyn Delgato  
Senior Clerk Typist