

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday September 10, 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 (arrived at 7:20pm)

Town Officials present:

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

Other interested parties present:

Jean Van Kuren Dale Van Kuren Ed Baumler Roger Smith Deb/Al Kuerzdoerfer

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** the minutes of the meeting held on August 13, 2019, as written.

Jonathan Hickey	Aye	Richard McNamara	Abstain
Patricia Burkard	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 7:02 p.m. The session ended at 7:19 p.m. and the Zoning Board of Appeals meeting opened.

Old Business

Appeal No. 3 (from Oct 2018 and Feb 2019 meetings)

Jean & Dale Van Kuren
Residential Single Family

Requests the Board of Appeals approve and grant a Use Variance to convert a garage into a single apartment at 5266 Old Goodrich Road.

Appeal No. 3 is in variance to §229-47.

DISCUSSION:

Dale Van Kuren is present. Chairman Michnik noted that there is a letter from the Highway Superintendent James Dussing to James Callahan dated May 2, 2019 on file, it reads: "I met with Dale Van Kuren this

morning to discuss the curb cut for the remodel/repurpose of the property on Old Goodrich. There is really no alteration to the curb cut within the Town's right of way. I do not have an issue with the placement of the new driveway or parking area. Please let this email serve as my approval of the project. If you would like use to formally issue a curb cut permit, we can do that in addition to this letter. Thank you." Chairman Michnik clarified that the approval in this letter is for the driveway only. Mr. Van Kuren understands.

Mr. Van Kuren said in the last meeting there was a question regarding the Health Department approval for the septic system. He has received approval for that. They also hired an architect, Gerry Shaffer, that drew up a set of plans. The cost estimate would be approximately \$200,000.

Mr. McNamara asked what will be in the loft upstairs, Mr. Van Kuren said that will be an office, it will not be enclosed, nor will there be a door on it. It will not be used as a spare bedroom.

Mrs. Burkard asked for confirmation that it will be aluminum siding on the outside. Mr. Van Kuren said no it will be vinyl. The building will be rented to his daughter who will live there. Mrs. Burkard asked what the intention is if and when the daughter no longer lives there. Mr. Van Kuren said they have other family members that may be interested, however his daughter plans on being here for a long time. Mrs. Burkard is concerned with what will happen to the building in the future. She asked if he intended on using it for anything other than a family member. Mr. Van Kuren said no, not at this time.

Mr. Mills asked if the applicant would be amenable to a condition stating that the structure not be used for any income generation or as a rental. Mr. Van Kuren asked if that is something that has to be done. Mr. Mills explained that the restriction would be done by deed restriction stating that it will only be used for family. Mr. Van Kuren said they currently have arrangements with the Bank of Akron and he is wondering what their position would be if there was a deed restriction on the property. Deputy Town Attorney Steve Bengart said he assumes the bank knows of the existing plans that it will not be used as a rental, Mr. Van Kuren said yes. Deputy Town Attorney Steve Bengart went on to say that generally the lender is not going to care about whether it is a rental because they are not relying on the income generated by the building in making their determination whether they lend him money. The applicant may want to find out. It is clarified that the deed restriction will go with any future new owner of the property. Mr. Van Kuren explained that his son is currently living in the existing house. It is further clarified that the deed restriction will only apply to the second residence on the property. The existing home can be rented, but a family member of the property owner (or the property owner himself/herself) will only be allowed to live in the second residence. Mr. Van Kuren said he would accept the condition of a deed restriction as discussed. It is clarified that both structures cannot be used as rentals.

Mr. Hickey asked what is motivating the applicant to do this. Mr. Van Kuren said it is mainly to provide a place for his son and daughter. Mr. Hickey said one of the elements the board looks at in reviewing the request is if the applicant will get a reasonable return, financially. Mr. Van Kuren feels this is the best use of the property.

Chairman Michnik is concerned that the property will eventually become a rental, how will the applicant advise the Town that the person who is in there is a relative. Mr. Van Kuren said the long term plan is to have his son and daughter live there. Chairman Michnik said what if his daughter moves out and Mr. Van Kuren does not have another family member who wants to rent the building. Mr. Van Kuren said there is a possibility that he and his wife may move in to the building. Deputy Town Attorney Steve Bengart asked if the applicant would be ok with deed restricting the entire property, this would mean no one but family could reside in either unit. Mr. Van Kuren asked if it has to be done this way. Deputy Town Attorney Steve

Bengart said that is up to the Board. Mr. and Mrs. Van Kuren agreed with the condition if it has to be that way.

Mr. Mills referred to the documentation from Erie County Health Department and asked what it is for, Mr. Van Kuren said it is for a new secondary system at the property. The proper documentation is on file.

In response to Mrs. Burkard's questions, Mr. Van Kuren said the gas tanks that were underground have all been removed and the surrounding soil is ok.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 3 under Old Business, as written with the condition that there is a deed restriction on the entirety of the property, both units at 5266 Old Goodrich Road, on the date of closing into perpetuity, that the residents of both units must be family members of the owner/s. The deed is to be filed as explained below. A further condition is the owners of the property at 5266 Old Goodrich Road on or before December 31st of each calendar year are required to submit in written form to the Town Attorney's office a letter that confirms the units are only being resided by family members. The letter shall include the full name and relationship of the family member. If the same family member continues to reside in the unit a letter is not required by December 31st of each year. The Town must be notified if someone new resides there. The existing home is to be considered the north unit and the new home will be considered the south unit.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart said the deed must be provided to the Town Attorney's office. It must be recorded and a copy provided after the final version has been prepared and executed for the deed restriction. He suggested the applicant contact his office to work on language that is acceptable to the applicant's attorney. It will then be filed and the Town is to get a stamped filed copy. Mr. Van Kuren understands.

Mr. Hickey said the Van Kuren's have been before the Zoning Board three (3) times and they have followed up on what the Board has asked for. The applicants have indicated that there is not a financial component to the project, so whether or not there is a reasonable return does not factor in. The history of the property is rare and unique. The property and where it is situated is unique, there is no precedent being set by voting in favor of the variance because it is not altering the essential character of the neighborhood. Mr. Hickey referred to Town Code §229-46(c) which speaks to containment of future large scale developments and the preservation of Open Space to maintain a suburban character. He does not feel this is a concern in light of the uniqueness of the property and what it has been used for historically and the fact that there can't really be anything else built in and around it. He is not sure if the request is self-created but he does not feel it outweighs the overall hardship if the variance was denied.

Chairman Michnik asked if the address is going to be 5266 Old Goodrich Road, Mr. Van Kuren said yes, the units will be known as 1 and 2 or A and B. Deputy Town Attorney Steve Bengart suggested the units be labeled as north and south for the Zoning Board's purposes. North is the main residence and south is the other. The tax bills will designate 1 and 2 or A and B with the same SBL number, Deputy Town Attorney Steve Bengart does not want to confuse that issue for the Assessor's Office.

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

MOTION CARRIED.

Appeal No. 7 (from August 2019 meeting)

Edward Baumler
Residential Single Family

*Requests the Board of Appeals approve and grant:

- 1.) A 314 square foot variance to allow a 704 square foot attached garage addition.
- 2.) A 1' variance to allow a 44' front yard setback.

Both requests apply to 9341 Pine Breeze Lane.

Appeal No. 7 is in variance to §229-55(D) and §229-52(A)(1).

*This request is amended from the original request at the August 2019 meeting.

Mr. McNamara will not be voting on this appeal as he was not in attendance at the August 2019 meeting and he did not read the minutes from that meeting. Mr. Krey will participate in the discussion and will vote on Appeal No. 7 from the August 2019 meeting.

DISCUSSION:

Edward Baumler is present. There are four (4) neighbor notification forms on file.

Mr. Mills read a letter from Beth Hyer dated September 10, 2019 into the record: "Thank you for taking the time to speak with me this morning for sending over the link with information about the requested variance at 9342 Pine Breeze Lane. As I mentioned, the owner of the property is in construction and based on these drawings I'm concerned he is planning to keep his equipment at the home. I would prefer that construction equipment not be coming and going from a residential property within a neighborhood. As I envision his employees coming and going to pick up equipment as needed. If possible, would the zoning board be able to inquire about what the garage will be used for? If it is for his company I would like to voice my concerns. Thank you." A hard copy of the letter is on file.

Mr. Baumler explained that the footprint has been reduced because the Board had concerns that it would look too overpowering to the house. He reduced it by 8' wide, from 24' down to 16'. He submitted two (2) options and said he is looking at option #2. This will be for his two (2) sports cars, his lawn tractor with a snow thrower on the front and a zero-turn lawn tractor, this is what will be housed and is all that will fit in the proposed structure. With regards to the concerns of his construction company, he has only one (1) employee and one (1) van. He keeps his van at Pohlman Auto Place on Goodrich Road. He does not have anyone coming and going.

Mr. Krey voiced his concern regarding the street view, it looks like two-thirds of the structure is garage space. He asked if the entrance to the garage could be moved to the side, Mr. Baumler said that would look worse because it would have to be longer. The original plan that was approved actually showed four (4) cars, this new plan only shows two (2) and one and a half.

Chairman Michnik asked where the 2 car attached addition in Pine Breeze, that Mr. Baumler referred to, is located. He said it is past his house, past Sitka Spruce, on the right-hand side. Chairman Michnik said he does not remember that request coming before the Zoning Board.

Mrs. Burkard voiced her concern on how it will look. She asked if Mr. Baumler would agree that 2/3's would be the garage space and 1/3 will be the home. Mr. Baumler said no. Mrs. Burkard referred to Option #2 and asked how far back the garage sits, Mr. Baumler said 11' 9". Mr. Baumler said if you look at the backside of the Option #2 you'll see that it is mirroring the sun porch which is on the other side, so that he can put an awning back there that would block the wind. He will also add a couple windows to the long side of the addition.

Mr. Mills is also concerned with the aesthetics particularly the west elevation. He would like to see some windows along this side, with possibly some shutters to match the house. Mr. Baumler said there will be windows in there and it will look nice. He also agreed that there will be landscaping . If a condition was made that there are at least three (3) windows along the side and that side be fully landscaped, Mr. Baumler is ok with that. The back garage door will be single so he can get the tractor in and out, if the Board does not like the man-door he will not put it there. Chairman Michnik suggested putting the man-door on the inside where the canopy/awning will be. Mr. Baumler said no one will see the back where the garage door and the man-door are.

ACTION:

Motion by Patrick Krey, seconded by Ryan Mills, to **approve** Appeal No. 7, under Old Business, as written and depicted in Option #2 on file with the following conditions:

- The garage will not be used for business purposes.
- There are to be at least three (3) windows on the west side of the addition and it is to be fully landscaped mirroring the east side.
- The man-door on the rear elevation be moved to the east side.

ON THE QUESTION:

Mr. Krey explained that the applicant looked at other options and Mr. Krey believes there is no alternative method to meet his needs for storage. It will not produce an undesirable change in the neighborhood because there is a similar garage close by.

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

MOTION CARRIED.

Mr. McNamara will now participate and vote on the remaining agenda items.

Appeal No. 2(from April 2019 meeting)
 Deborah/Alan Kuerzdoerfer
 Residential Single Family

*Requests the Board of Appeals approve and grant a 402 square foot variance to allow a 616 square foot attached garage addition resulting in 1,081 square feet of total attached garage space located at 10775 Boyd Drive.

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

*This request is amended from the original request at the April 2019 meeting.

DISCUSSION:

Alan Kuerzdoerfer is present and said it will be a 22' by 28' garage with a breezeway roof attached to the house. There is a drawing on the survey that indicates what the applicant is looking for. There are four (4) neighbor notification forms on file.

Mr. Mills asked if a variance is necessary even with the breezeway. Mr. Bleuer said yes and explained that an accessory structure even attached is limited in size based on 40% of the unit or 960 square feet, whichever is less.

Chairman Michnik asked if the Board needs a blueprint, Mr. Bleuer said that is the Board's prerogative. The Building Department has a set of blueprints from the builder.

Mr. Hickey asked what the height of the peaks are immediately adjacent, the addition will be in line with the house, he would not want it any higher. He clarified that the footprint is the same as the previous variance request.

The siding will match the house and the garage door will be the same as the door on the other garage. The breezeway will be a simple roof of 6'. The architectural roof will match the house. Mr. Mills asked if the applicant can get away with any less size. Mr. Kuerzdoerfer said the whole object is that they want to get the boat in there and one of their cars, the other garage does not have room. Mr. Mills said his concern is with the ratio between the house and the garage. Mr. Kuerzdoerfer said he could go down to 20' in width. Mr. Mills asked if he could do 20' by 25'. Mr. Kuerzdoerfer said probably, but he would rather have 26'.

Chairman Michnik asked if there are other homes in the neighborhood with a similar structure. Mr. Kuerzdoerfer said there is one on Margaret that has a 2-car garage and another down Boyd with a 2-car garage and two (2) sheds. There is also one on Bickert that has a 23' high 2-car garage. There is brick on the front of their house and they are amenable to adding it to the addition so it matches.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 2, as written, with the following conditions:

- the proposed attached structure be reduced in size to 20' by 26'
- brick shall be used on the front façade, facing the street, to match the house.

ON THE QUESTION:

Mr. Mills noted that the variance request is amended to read, "A 306 square foot variance to allow a 520 square foot attached garage addition resulting in 826 square feet of total attached garage space."

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

MOTION CARRIED.

New Business

Appeal No. 1

Roger Smith
Residential Single Family

Requests the Board of Appeals approve and grant a 270 square foot variance to allow a 548 square foot attached garage addition resulting in 1,230 square feet of total attached garage space located at 5597 Martha's Vineyard.

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

DISCUSSION:

Mr. Smith is present. There are four (4) neighbor notification forms on file. Mr. Smith submitted a packet to the Board members, it is labeled Package A and is on file. Mr. Smith said the same brick will be used on the addition as is on the house and noted that the first page is a rendering of what the addition will look like. He does not want the garage to look like an add-on, he wants it to look like that is the way it was built originally 12 years ago. The packet includes photos of homes with similar garages in the neighborhood.

Mr. McNamara asked what the applicant will use the garage for. Mr. Smith said it will be used for storage of his pool equipment, lawn equipment, he has a work bench, and there are four (4) cars in the family that he would like to have covered. His work bench is for the handy work that he does around the house.

Mrs. Burkard asked if the garage is going right up to where the pool fence is, Mr. Smith said yes, so access will be to the back of the garage.

Mr. Mills voiced his concern with the amount of garage. It will be a total of five (5) spaces but only four (4) doors will be seen, so four (4) cars can be stored and the other space will be for pool/lawn equipment, etc. Mr. Mills asked if the applicant could get away with any less size and still accomplish his goals. Mr. Smith said no, he can't.

Chairman Michnik asked what the plan is for the pool fence, will it remain in the same location? Mr. Smith said the fence would have to come down and be replaced after the garage is built. There is not a second floor to the addition, there is an attic space. The height will be approximately 18' high, the height was questioned. The cost estimate is about \$50,000.

Mr. McNamara said he thinks lowering the height of the garage would not be a good look.

Mr. Mills asked if the applicant contemplated this project at the time of the recent purchase of the home. Mr. Smith said yes, he knew the house would not work for him unless he got the garage so he went to the Building Department and asked what was involved. A representative of the Building Department explained the process noting that Mr. Smith would have to apply for a variance and although they could not promise anything it would likely be approved.

It is clarified that Mr. Smith will not operate a business out of the addition.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written, with the following conditions:

- the front façade is to be stone as depicted in page 1 of Exhibit A.
- the applicant agrees to not operate any type of business out of the additional garage space.

ON THE QUESTION:

The conditions are acceptable to Mr. Smith. Mr. Hickey said the benefit to Mr. Smith outweighs any detriment to the health, safety and welfare of the community. The request is not substantial in light of the neighborhood and the size of the primary dwelling. There is no adverse physical or environmental impact. The request is probably self-created but that is the least important in a situation like this.

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

MOTION CARRIED.

Meeting adjourned at 8:40 p.m.

Carolyn Delgato
Senior Clerk Typist