

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday December 12, 2023

Chairman Ryan Mills called the meeting to order at 5:30 p.m.

Zoning Board of Appeals members present:

Chairman Ryan Mills	Patrick Krey	Raymond Skaine
Richard McNamara	Gerald Drinkard	Patricia Burkard

Town Officials present:

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

Other Interested Parties:

Rich Friedman	Karen Tober	Keith Tober	Michael Berger	Paul Hufnagel
Cheryl Hufnagel	Robert Callan	Ed Nesselbeck	Kermit Dietz	
Hanna Kfoury	Mary Clare Perez deLeon			

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** the minutes of the meeting held on November 14, 2023.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Patricia Burkard	Aye	Patrick Krey	Abstain

MOTION CARRIED

Motion by Raymond Skaine, seconded by Patrick Krey, to **approve** the minutes of the meeting held on January 10, 2023.

Ryan Mills	Aye	Raymond Skaine	Aye	Patrick Krey	Aye
Richard McNamara	Aye	Gerald Drinkard	Aye	Patricia Burkard	Abstain

ON THE QUESTION:

Mr. Drinkard stated that if you vote, you were here. Therefore, he votes Aye.

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

JFD Holdings
Residential Single-Family

Town Code Reference:

1. §229-52(B)
2. §229-52(B)

Applicant requests variances:

1. of 6'6" to allow for a 6' side yard setback to the west property line; and
2. of 6'6" to allow for a 6' side yard setback to the east property line;

all for the construction of a single-family principal structure located at 8060 Miles Road.

DISCUSSION:

Mike Berger with Sutton Architecture was present to represent this project on behalf of the applicant, noting that the setback variances they are seeking are for a total of 12 inches, with 6 inches on the side and 6 inches on the west.

Mr. Berger added that the design of the proposed house is meant to be very attractive, and fit in with the design and character of the neighborhood. He does not feel that it would cause an undesirable change to the character of the neighborhood.

Additionally, Mr. Berger added that he suggests the benefit cannot be achieved in another way, they have produced this building as narrow as they can while still allowing to have some character to present to the street with aesthetics such as a front porch and front entry door. If they were to attempt to squeeze it any more in order to meet the criteria of the setbacks, it would require some redesign that would make it an undesirable change to the neighborhood.

Mr. Berger responded to the question as to whether the request is substantial, noting that he doesn't believe so because they are requesting a 6 in. variance on both sides.

In regards to whether an adverse effect is being caused by this request, Mr. Berger stated that they are aware there are some trees along the one side of the property, but the 6 in. variance should not be any impact on the existing trees.

Mr. Berger noted that the lot is narrow when compared to other lots in the neighborhood, but it is not their fault that it is so narrow, and they are trying to work within the parameters that the lot offers.

Mr. Drinkard clarified that the request is for a 6' 6" variance on either side, for a total of 13' of a variance that has been requested.

Mr. Drinkard asked Mr. Berger who bought the lot and how long ago it was purchased.

Mr. Berger responded no, he does not have that info.

Mr. Drinkard asked Mr. Bleuer if he had any knowledge of it.

Mr. Bleuer responded no.

Mr. Drinkard stated he is aware that the lot has been unused for quite some time, and a building was taken down. Whomever purchased the lot was aware that they purchased a 50 ft. lot, whereas all of the homes in the immediate area appear to be approximately 100 ft., which is the requirement.

Referring the character of the neighborhood, Mr. Drinkard stated that what he'd like to hear from the owner of the lot, is why would you have a 50 ft. lot and believe that you are able to build a 2,300 sq. ft. house on it.

Mr. Drinkard stated that what is out of character is to have anything larger on the lot than what was previously located on that property. The house should be sized appropriate to the size of the lot.

Mr. Berger responded that they believe in order to keep with the character of most of the surrounding houses, it needs to have certain elements that present itself to the street view. This requires the house to be the width of what they are requesting. They have designed and reduced it the best that they are able to. If it was squeezed to meet the zoning setback requirements, the front of the house would be the garage.

Mr. Drinkard noted that the neighbor on the east side has a number of very large trees, many come over on to the applicant's lot, and he wonders what the builder would do with the trees.

Mr. Berger stated that it is the intent of the owner to preserve as many of the trees as possible. He hasn't studied the property lines and where the branches fall in relation to properties, that is something that will be taken in to consideration when excavation for the proposed home begins.

Mr. Drinkard expressed concern with the trees and the roots of the trees based on the size of the variance request, noting that the longevity and the look of the trees are of great concern.

Mr. Berger stated that another option they have considered would be to shift the house away from the trees, which would result in a request for a greater variance on the other side.

Mr. Drinkard noted that he is more concerned with the side that has the mature vegetation, ultimately it also effects the character of the neighborhood. Mr. Drinkard stated that it is an older neighborhood with mature vegetation, and that makes the neighborhood.

Referring to the mature trees on the lot that the variance request is for, Mr. Drinkard asked if those trees will need to be removed.

Mr. Berger responded yes; it will be necessary for the construction of the house.

Mr. Skaine stated that he is in agreement with Mr. Drinkard in regards to the trees. He does not feel that the lot looks like it is appropriate for the construction of a home, and it will change the character of the neighborhood.

Chairman Mills voiced his concern with the character of the neighborhood, and how this impacts the other homes in the area. There are assorted possibilities through design process to help mitigate that, and he does not feel that it is accomplished through the floor plans or architectural drawings that were provided.

Chairman Mills asked who the legal owner of the parcel is.

Mr. Berger responded that he believes JFD Holdings is the legal owner of the property, but he cannot say for sure, or for how long they have owned the property.

Chairman Mills stated that the owner's information cannot be entered in to the record in terms of a hardship, if we don't have definitive owner information.

Chairman Mills asked what role RSA Development plays, as they are listed on the architectural drawings.

Mr. Berger stated that it is their direct client, Russ Salvatore Associates.

Chairman Mills asked if Russ Salvatore is the legal owner of the property.

Mr. Berger responded that he believes it is a partnership agreement, but he does not know the exact details.

Mr. Krey asked if the Board denied the variance request, they would still be able to build a home, but it would need to be structured differently.

Mr. Berger stated that he feels they could make the requirements of the setback as stated in the code, but it would be a much different product. Mr. Berger added that their feeling is that it was okay with getting lesser product.

Mr. Krey did agree that he understands neighbor's concerns that the proposed home is too big for the lot.

Mr. Krey asked if there had been any consideration given to how far back the home can be placed in order to preserve the existing trees and not have to disrupt them.

Mr. Berger responded that if there was a way to provide the home as designed but in a different location further back on the property, they would be interested in that opportunity. He doesn't believe that there is any issue with the ownership as to where the home sits, they want the house presentable from the road and the aesthetics to it.

Mr. McNamara noted that the proposed house is 38 ft. wide, and the lot is only 50 ft. if the variance is granted, there is no way to assure that it will be followed perfectly in that area, and they would end up returning for another variance.

Mr. McNamara expressed his agreement with the opinions of the other board members thus far.

Mrs. Burkard also agreed that the proposed home appears to be too big for the small lot.

In regards to Public Participation, the following residents spoke:

1. Ed Nesselbeck of 8070 Miles Road:

- agrees with the concerns of the Board, it doesn't meet the character of the neighborhood
- reviewing the variance criteria from the website, it's obvious it doesn't fit in with the neighborhood
- if they wanted to live in Amherst, they would have bought a house in Amherst
- Clarence has always been a pleasing community to live in, partly because of the zoning rules

2. Robert Callan of 8075 Miles Road:

- has seen the lot in question go through changes the years
- a 50 ft. setback is completely out of character for the neighborhood, no matter how it is constructed
- does not feel this is going to work any way that you look at it
- the trees will be dead within 5 years if you start digging around them

Neighbor Notifications are on file.

Two letters of correspondence were received, both were from the residents that spoke tonight. These are also in the project file.

Mr. Drinkard asked Mr. Berger if his client would reconsider the size of the house on the lot as opposed to potentially being denied a variance.

Mr. Berger requested to have their appeal tabled so that they can redesign.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara to **table** Appeal No. 1

ON THE QUESTION:

Chairman Mills stated he voted to table after hearing the various comments from the board members and the public, including possible alternatives in regards to the setback as well as size and architectural design.

Chairman Mills added that each board member is different in regards to their perspective, but personally he would like to see a more unique design that takes the smaller lot size in to consideration. Things like possibly a one-car garage, and more architectural elements.

Mr. Krey added that he would like to see a plan of what a conforming house would look like on the lot. Something that can be accomplished without needing a variance.

In terms of the setback area, Mr. Krey noted that addressing with the trees and possibly moving the house back on the lot is something else he would like to see.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

Appeal No. 2

Thomas Cavanagh
Residential Single-Family

Town Code Reference:
§101-3(I)

Applicant requests a variance to allow the climbable (unfinished) side of a fence to be visible from the neighboring property located at 8340 Clarence Center Road.

DISCUSSION:

The applicant, Tom Cavanagh was present to represent his request. Mr. Cavanagh stated that the fence is on the side of a duplex, and the plow that was hired by the owner of the duplex ran in to the chain link fence that was there originally. Mr. Cavanagh stated that he utilized the existing holes to rebuild the fence, replacing it with a wooden fence. He did not want to risk ruining the nice side of the fence with the plow returning. Mr. Cavanagh stated that his neighbor assisted him with rebuilding the fence, and gave him permission to position the fence this way, with the nice side facing Mr. Cavanagh's property.

Mr. Cavanagh stated that he ran the fence from the home to the driveway, with the pretty side facing the street so that when you look at the home from the street, the pretty side is facing out.

Mr. McNamara asked if a permit was received before putting the fence up.

Mr. Cavanagh responded no; he replaced the fence that was there, utilizing the same holes. He didn't think he needed a permit to do that.

Mrs. Burkard noted that the fence appears to be too close to the driveway, and asked if it is located in the proper spot.

Mr. Cavanagh responded yes; his property line goes right up to the neighbor's driveway; he is approximately a foot and a half off of the property line itself.

Mrs. Burkard stated that if the board approves this variance, other residents will question why they can't also do the same with their fence.

Mr. Cavanagh responded that he always thought it was a weird rule anyway; why would his neighbor have the nice side when he purchased and installed the fence.

Mr. Cavanagh stated that he read New York State Code and it said that the front part of the fence facing the driveway should be the pretty side, and it is only a recommendation that the pretty side faces the neighboring property.

Mr. Bleuer clarified that Town of Clarence Code is what governs this fence, and Town Code requires that the good non-climbable side faces out.

Mrs. Burkard asked how far a fence needs to be from a property line.

Mr. Bleuer responded that fences can go right up to a property line, as long as it remains wholly located on the applicant's property.

Mr. Krey asked Mr. Cavanagh how long he has lived at this house.

Mr. Cavanagh responded since 2015, the chain-link fence was there when they moved in. He replaced the damaged chain-link with the current wood fence, with the help of his neighbor.

Mr. Krey asked how much the section of fence cost.

Mr. Cavanagh responded that it was \$1,487.00. He installed a nice cedar fence.

Mr. Krey asked if there has been any discussion between Mr. Cavanagh and his neighbor in regards to landscaping to cover up the fence.

Mr. Cavanagh responded that there is not enough area to plant anything between the driveway and the fence. He does plan to put in another side of fence, because a snow storm destroyed some vegetation.

Mr. Skaine stated that he is pleased that on the Clarence Center Road side it is climbable towards the back, because on the side you won't see it as much. Mr. Skaine commends Mr. Cavanagh and his neighbor for working together, he likes how it has been done.

Mr. Drinkard asked how long it would take to correct the section of fence in question.

Mr. Cavanagh responded that it depends on the weather, it's easier to do in the nicer weather. There are 185 pickets, he works until 4:00 p.m. and it gets dark around 5:00 p.m., it would take approximately a weekend.

Mr. Drinkard asked Mr. Cavanagh if he has considered correcting the section of fence in question.

Mr. Cavanagh responded yes, but if he is able to save \$1,000.00, he'd prefer to do that.

Mr. Drinkard stated that a very big part of this request is that Mr. Cavanagh's neighbor does not have an issue with the fence, and assisted him in building it.

Mr. Cavanagh stated that as a collaboration, they didn't think it was a big deal to have the fence facing the wrong way per Town of Clarence of Clarence Code.

Chairman Mills stated that the one distinguishing factor is that this is a multi-family property next door, but the Town Code is in place for a reason, and Mr. Cavanagh is asking for relief from that code.

The Board's concern are the character and aesthetics of the neighborhood and while the front-facing section is what is most seen, you can also see it at an angle.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

Chairman Mills noted that as a board they have to consider not only current neighbors, but future neighbors as well.

Mr. Cavanagh stated that while he understands the multi-family home next door, people move in and out. The single-family homes around him are all 1-acre lots, and the fence does not go all the way to the end of the property line, so the residential homes don't have any view of the fence.

ACTION:

Motion by Raymond Skaine, seconded by Gerald Drinkard to **approve** Appeal No. 2 as written.

ON THE QUESTION:

Mr. Krey stated that he would like to see the view mitigated, and suggested a climbing vine plant on the fence.

Mr. Cavanagh stated that he would need to make sure there is drain tile.

Mr. McNamara asked if Mr. Cavanagh plans to stain the fence.

Mr. Cavanagh responded no; he is going to leave it in its original color. He has already applied waterproofing to it.

Mr. Drinkard stated that he travels Clarence Center Road multiple times a day, and never noticed the fence.

Mr. Cavanagh stated that he isn't sure a lot of people know the rule regarding which way the fence faces.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Nay
Patrick Krey	Nay	Richard McNamara	Aye		

MOTION CARRIED

Appeal No. 3

Ashvani Gulati
Residential Single-Family

Town Code Reference:

1. §229-55(H)
2. §229-55(D)
3. §229-55(H)

Applicant requests variances:

1. to allow a secondary detached garage; and
 2. to allow the detached accessory structure to be located within the front yard setback; and
 3. of 280 sq. ft. to allow a 480 sq. ft. detached accessory structure (garage);
- located at 5884 Bent Brook Court.

Appeal No. 3 **tabled** at the request of the applicant.

Appeal No. 4

Hanna Kfourri
Residential Single-Family

Town Code Reference:

1. §229-55(H)
2. §229-55(H)
3. §229-55(E)(2)
4. §229-55(I)
5. §229-55(F)

Applicant requests variances:

1. to allow a secondary detached garage (pole barn); and
 2. of 1,840 sq. ft. to allow a 2,040 sq. ft. detached accessory structure (pole barn); and
 3. of 5' to allow a 21' tall detached accessory structure (pole barn); and
 4. of 5' to allow a 14' tall overhead door; and
 5. to allow an accessory structure (pole barn) greater than 400 sq. ft. to use materials different from the principal structure;
- located at 9254 Roll Road.

DISCUSSION:

Nicholas Leubner was present to represent the applicant. Mr. Leubner owns Leubner Construction and is the builder for the proposed project.

Mr. Leubner reviewed the variances that they are requesting, explaining that the purpose of the building is for the storage of personal items, such as a boat and an RV. Mr. Leubner noted that they don't believe it will have an impact on the surrounding properties, as several nearby neighbors also have pole barns, all of which are built with the same materials that Mr. Kfourri is proposing.

Mr. Leubner stated that the materials that they are proposing will all match the house in color and design.

Mr. Krey asked Mr. Leubner to review the properties in the area that also have pole barns similar in size, noting that the proposed pole barn seems to be exceptionally larger than the ones Mr. Leubner is noting.

Mr. Krey asked why Mr. Kfourri needs the proposed pole barn to be so large.

Mr. Leubner explained that Mr. Kfourri's RV is very large, and he would like to store it inside the proposed pole barn.

Hanna Kfourri, owner of 9254 Roll Road was present, and stated that the purpose of the proposed pole barn is to store his personal items, which are of substantial size.

Mr. Leubner noted that while the RV is 42 ft. long, it is necessary to have additional room to maneuver it inside the barn.

Mr. Krey asked if the existing driveway will be extended to the proposed pole barn.

Mr. Kfourri stated yes, they will extend the existing driveway to the back yard and the proposed pole barn.

Mr. Krey asked if the color of the materials will match the house.

Mr. Kfourri responded definitely.

Mrs. Burkard asked Mr. Kfourri if he intends to run a business out of the proposed structure.

Mr. Kfourri responded that he owns his own business, his office is in his house, but his shop is located in Buffalo. He has no intention to run his business out of the proposed pole barn.

Mr. Kfourri noted that he owns the properties located at 9276 and 9290 Roll Road, and his son owns the house located next to this property.

Mrs. Burkard asked Mr. Kfourri if he would agree to a condition placed on a potential approval, stating that he is not permitted to run a business out of the proposed pole barn.

Mr. Kfourri responded yes.

Mr. Drinkard reviewed the sizes of the pole barns that Mr. Leubner addressed, noting that the proposed pole barn is substantially larger than the one located directly to the north, as well as the one located to the south. Mr. Drinkard stated that this is a large device that Mr. Kfourri wants to place on the back of his lot, and effects the character of the neighborhood.

Mr. Drinkard asked Mr. Kfourri why he is proposing to place the proposed pole barn in the location that he is requesting.

Mr. Kfourri responded that it is the only area that he is able to access without interfering the west side of the house, which is where the small creek is located. Also, he is able to extend his driveway to the proposed site with easy access for entering and exiting.

Mr. Kfourri explained the barn behind his property, which is approximately 5 ft. from his property line, it is smaller but the property to the north of his is much larger than what he is requesting. He also noted that he has substantial vegetation around where he would like to have the proposed barn located, which will mitigate the view. He plans to make the side of the proposed pole barn resemble the front of the house, so that it is visually appealing.

Mr. Drinkard asked if Mr. Kfourri would agree to a condition placed stating that he must provide vegetation to mitigate the view.

Chairman Mills stated that he is concerned with the size of the proposed pole barn, as it is a very large structure. It appears his lot size is approximately 1.46 acres, and the neighbors with similar or larger accessory structures may have had theirs up prior to current code changes, or may have larger lots.

Chairman Mills asked Mr. Kfourri if he plans to have the front of the proposed pole barn be metal also.

Mr. Kfourri responded that is his plan, if he can find the same shade, he may make the bottom part match the house or reverse it, but he plans to see what the contractor recommends.

Chairman Mills noted that there are multiple design elements that can help to mitigate the size of the proposed structure, including landscaping and the front façade. The stone will go a long way, or vinyl siding on the front instead of metal.

Discussion continued regarding possible materials and color schemes that may be used. Mr. Kfourri stated that he prefers to keep it symmetrical.

Chairman Mills explained that he isn't necessarily suggesting vinyl specifically, but a higher-end material on the front façade of the proposed structure, and that stone is a nice element.

Mr. Kfourri responded that they can consider that.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, with one letter of concern for this proposed project, though it was not signed. This correspondence will be marked Exhibit A and placed in to the project file.

Chairman Mills touched on the concerns made in the anonymous letter:

- such a large structure on a residential single-family lot
- more than a 5 ft. buffer from the north property line
- height of the doors on a commercial-type structure could be used for commercial purposes
- floodlights, siding materials and colors
- questioned whether the proposed structure will be used for the applicant's concrete business

Chairman Mills noted that Mr. Kfourri has agreed to a condition stipulating that he will not operate a business out of the proposed structure.

Mr. Kfourri stated that he can understand and appreciate the neighbor's concerns, there will absolutely not be any business operated from the structure, it will be used to store personal items only.

In regards to the concern about the location near the property line, Mr. Kfourri stated that the neighboring accessory structure is closer to his property line than what he is proposing for his accessory structure.

Mr. Krey asked what size Mr. Kfourri's home is.

Mr. Kfourri responded that it is 3,180 sq. ft. and he has owned this property since 2006-2007. They started building their home in 2019 then paused due to Covid, and moved in in 2020.

Chairman Mills asked Mr. Kfourri if he knew the property was zoned Residential Single-Family when he purchased it.

Mr. Kfourri stated that when he purchased the property, it was zoned Agricultural and has since been re-zoned.

Discussion continued regarding the zoning of the property.

Mr. Bleuer explained that although a property is zoned Residential Single-Family, if it is over 5 acres in size, it has all the rights of an agricultural property. It could have been that as the parcel was split off and reduced, it lost the agriculture zone status.

Mr. Krey addressed the concern regarding floodlights in the anonymous letter from the neighbor.

Mr. Kfourri stated that he plans to have a light on the front (facing Roll Road) of the proposed building, but no need for any other lighting on the other sides of the structure.

Mr. Krey reviewed some potential conditions with Mr. Kfourri, including additional landscaping.

Mr. Kfourri stated that he already has tall trees around the area where he is proposing the pole barn, and he plans to add more around the base to mitigate the view of the building.

Mr. Krey asked Mr. Kfourri what size evergreens he is planning to put in around the proposed structure.

Discussion continued regarding potential vegetation that Mr. Kfourri will plant.

Mr. Krey asked if Mr. Kfourri would agree to stone on the front façade.

Mr. Kfourri explained that he had a difficult time acquiring the stone that is on the house, but if he is able to find it to match the proposed pole barn, he will do that along the bottom to reverse the look, with the upper part being metal or vinyl.

Discussion continued regarding the stone on the front of the house, and attempting to match it on the proposed structure.

ACTION:

Motion by Patrick Krey, seconded by Richard McNamara to **approve** Appeal No. 4 as written, with the following conditions:

1. evergreens to be planted no less than 4’ tall, 10-15’ apart on the north, east, and west sides of the structure;
2. no business to be conducted out of the structure;
3. lighting only to be placed on the south side of the structure facing Roll Road;
4. stone façade or similar material that closely resembles the home to be placed on the front (south side, facing Roll Road) of the structure at least 4’ high

ON THE QUESTION:

Mr. Krey stated that the reason he is voting to approve this application is because there are similar structures in the area of similar size which addresses whether it is in character with the neighborhood. Also, the conditions imposed along with the existing heavy tree presence will help to mitigate the view from the neighbor’s property. Additionally, the home is large, therefore the proposed structure will not look out of place.

Mr. Bleuer added that the applicant has shown the potential for cupolas on the top of the structure, and should they be installed, the Planning Office would not deem that as part of the overall height of the building, and it would be acceptable.

Richard McNamara	Aye	Patrick Krey	Aye	Ryan Mills	Aye
Raymond Skaine	Aye	Gerald Drinkard	Aye		

MOTION CARRIED

Appeal No. 5

Jeff Palumbo
Residential Single-Family

Applicant requests a variance to allow chickens on a property less than 5 acres in size located at 5004 Winding Lane Farms.

Town Code Reference:
§229-47(B)

DISCUSSION:

Attorney Jeffrey Palumbo with the lawfirm Block Longo was present to represent the applicant.

Mr. Palumbo reviewed the detailed packet that was submitted with the application, noting that a letter from the homeowner explaining the primary reason for the chicken coop. In addition, there is also a letter from one of their child’s occupational therapise, supporting their request to keep the chickens.

Mr. Palumbo stated that his client has discussed this with all of their adjacent property owners, all of whom are in favor of the chicken coop.

Mr. Palumbo further reviewed the application packet, specifically stating that the chicken coop will not have a negative effect on the neighborhood or adjacent properties, as all of the properties are quite large in size.

Mr. Palumbo continued to review the family dynamics which are the primary reason for the applicant's request to keep the chickens.

Chairman Mills asked how long the family has been with the chickens.

Mr. Palumbo stated that the chickens have been with the family for approximately one year.

Chairman Mills noted that this property was recently acquired by Mr. Palumbo's client.

Mr. Palumbo responded that his client has not physically moved in to the property yet, he recently closed on the property and plans to move in. Everything that has been described in the packet has taken place in the former residence, and they are hoping to be able to continue this at their new residence.

Chairman Mills asked if there was any supporting documentation from a medical doctor.

Mr. Palumbo stated that while the child sees other doctors that they could have acquired additional documentation from, the occupational therapist sees the child most regularly.

Mr. Skaine stated that the placement of the chicken coop is very nice and back out of the way. He appreciates the details that were included in the packet with the care of the chickens.

Mr. Drinkard complimented the detailed packet that has made it easier to consider.

Mr. Drinkard stated that a concern he has is if the variance is granted and then the applicant moves, the variance stays with the land.

Mr. Drinkard noted that he did walk the property, and the chicken coop is very well placed, very well taken care of and very clean. This is a very important aspect of keeping the chickens, as many potential problems can arise from an unsanitary chicken coop.

Mr. Drinkard asked if there is any desire to increase the number of chickens, as the variance is for a total of 12 chickens.

Mr. Palumbo responded that there is no desire or need to increase the number of chickens.

Mr. Drinkard asked what happens if a chicken dies.

Mr. Palumbo stated that aside from having a very upset child, he does not have an answer for that.

Property owner Eric Lux was present and responded to this question, stating that he has not given consideration to what would happen if a chicken dies. That would be a tough conversation with his kids, that they would need to consider when the time comes.

Mr. Drinkard explained that when he walked the property, one of the things that he noticed is that the property is on Winding Lane Farm, which gives it the potential for being a farm. An adjacent property is a horse farm, and while that property is over 5 acres, it sets the character for the neighborhood.

Mr. Krey noted that when he went to the property, he was surprised that it is under 5 acres. The property and surrounding property are beautiful.

Mr. Krey asked where the applicant lived prior, and were there no issues there.

Mr. Lux explained his previous property and the chicken coop set up. He wasn't aware he needed a permit for the chickens.

Mr. Lux further explained that with moving to Winding Lane Farms he wanted a bigger, nicer area that complimented the property. The individual that he hired to build the chicken coop works for the Town of Clarence and had assumed that a permit was not needed, that it appeared there was enough land.

Mr. Lux stated that he then hired his contractor who asked if they had a permit for the chicken coop, and from that point on Mr. Lux contacted Mr. Palumbo to be sure that they were taking the proper steps and doing it the correct way.

Mrs. Burkard noted that the application was very thorough. As a retired teacher she has spent a lot of time working with special needs children, and to take the chickens away would not be in the child's best interest.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

Mr. Drinkard asked if the chicken's wings are clipped, and who does that.

Mr. Lux responded yes; his wife handled it.

Mr. Drinkard pointed out the layers to chicken's wings, and asked why they clipped them.

Mr. Lux explained that when they lived on Thompson Road, they did not have a fence on their property, and they were concerned the chickens would fly away. Mr. Lux stated that the chickens have never attempted to fly away, and that they are always excited to see him and his family.

Discussion continued regarding the chicken's routines.

Mr. Drinkard asked Mr. Lux what they do with the eggs, and do they sell them.

Mr. Lux responded no, they share and gift them to their neighbors.

Chairman Mills asked if there are any other chicken coops in the neighborhood.

Mr. Lux stated that he has seen a few in the area, but none as large as his.

Chairman Mills reviewed some conditions to discuss with Mr. Lux and Mr. Palumbo to see if they would be in agreement to them.

The variance would be only for the current ownership of the property, and would not convey to any future landowners.

Mr. Lux asked if they could make it for anyone in his family, as they hope to make it a generational home and possibly sell it to one of their children someday.

Mr. Bengart stated that they can make it a familial transfer, this way it stays within the family.

Chairman Mills then noted that the variance would cover only hens, no roosters.

Mr. Lux confirmed they do not have any roosters, and have no plans to at any time.

Chairman Mills stated that they would limit it to 12 chickens.

Mr. Lux responded yes.

Chairman Mills stated that the structure for the chickens shall remain in its current location.

Mr. Lux responded yes, no plans to move it.

Chairman Mills noted that there will be annual inspections by the Town, wings will remain clipped, the coop and runway are to remain clean and sanitary at all times, and the feed is to be stored in a metal or rodent-proof container.

Mr. Lux stated that he would agree to all of those conditions.

ACTION:

Motion by Ryan Mills, seconded by Raymond Skaine to **approve** Appeal No. 5 as written with the following conditions:

1. this variance request only runs with this owner or other members of the family, and will not convey to owners outside of the family.
2. the chickens remain as hens, no roosters
3. the structure remains where it is currently located and is not moved
4. the number of chickens is limited to 12
5. the applicant allows annual inspections from the Town of Clarence
6. wings of the chickens be clipped at all times
7. the chicken coop and chicken run are to be clean and sanitary at all times, no feces or odors present
8. the feed be stored in metal or rodent-proof containers

Mr. Lux has heard, understands, and agrees to these conditions.

ON THE QUESTION:

Mr. Krey explained that this property can be distinguished from other requests in that it is a highly vegetated large property, surrounded by other large properties, preventing the chickens from impeding on neighboring properties.

Mr. Krey also stated that the animals assisting with the situation with the child / children.

Chairman Mills explained that Winding Lane Farms is a very unique location with large parcels, an adjacent horse farm, well buffered with foliage.

Additionally, Chairman Mills noted that the applicant has provided substantial medical evidence for the need of the chickens for their child, and along with the multiple conditions, helps to distinguish from other chicken variance requests.

Mr. Bleuer stated that he had a conversation with a representative from the Building Department and they requested that the Zoning Board consider not only the chickens, but the coop as well, which they have done. Additionally, they identified that if this variance was granted, they would consider this structure an agricultural structure.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

Appeal No. 6

Shelly Lunz
Residential Single-Family

Applicant requests a variance of 65' to allow a 145' front yard setback located at 9709 Clarence Center Road.

Town Code Reference:
§229-52(A)(3)

DISCUSSION:

Scott Lunz was present and explained that they would like the setback variance for their new build so that they can be located behind the very large tree that is on the property. Additionally, further back on the lot it is higher, making it more desirable and according to the soil map, the soil is more favorable as well.

Mr. Lunz stated that it is meant to be a single-family ranch home, and as shown in the drawings that he submitted, the garage starts at the 145' point. These are preliminary plans.

Mr. Skaine noted that the requested location of Mr. Lunz's proposed home, they would be looking in to the backyard of the neighbor to the east at 9705 Clarence Center Rd.

Discussion continued.

Chairman Mills noted that according to the aerial, they would be looking in to the backyard of 5924 Kamner Road.

Mr. Lunz stated that there is a good distance between the homes, with many trees.
Mr. Skaine does not like the requested location of the proposed home, placed so far back.

Mr. Drinkard noted that the location of the proposed home is at the “crook” of what looks like a big ‘L’ that is Mr. Lunz’s property. The backyard down behind 3 houses on Kamner Drive, and one house on Clarence Center Road.

Mr. Drinkard asked if this property shaped like an “L” was part of 9705 Clarence Center Road at one time.

Mr. Lunz responded yes; he believes so.

Mr. Drinkard noted that this parcel was split off purposely to be what it is.

Mr. Lunz stated that he believes the previous owner also had a variance.

Mr. Drinkard noted that there was discussion in prior minutes regarding the driveway, and use of the driveway for this split off, ‘L’ piece of property that Mr. Lunz wants to build a house on. Mr. Drinkard asked what Mr. Lunz plans for a driveway, and is there any assumed use of the easement of the driveway that is already in place on the original parent parcel.

Mr. Lunz stated that the Town of Clarence is requiring them to cut in their driveway from the U-shaped driveway that was part of 9705 Clarence Center Road. This way there will only be one curb cut.

Mr. Drinkard stated that to the east, Mr. Lunz will be facing a ranch home.

Chairman Mills asked what the square footage is that they have planned for their home.

Mr. Lunz responded 1,836 sq. ft. a ranch with a 3-car garage.

Chairman Mills confirmed that the primary reason for the setback request is to preserve trees on the parcel.

Mr. Lunz responded that there is one very large tree, which he has a photo of.

Mr. Bleuer noted that there are two illustrations. One is a submittal by the applicant which is the survey type document with the house drawn out, and also an aerial. There are conflicting locations of the home. The aerial was done by the Planning Office, and is not done with the exact location of the proposed home, but is meant to describe where it is located on the property in terms of where it will be staked. The actual representation of what the applicant submitted shows where the house will be located.

Discussion continued regarding the differing photos.

Exhibit A was entered in to the record, which shows where the tree is located.

Chairman Mills asked Mr. Lunz when they acquired this property, and if they were aware of the history of the property at that time.

Mr. Lunz stated that they purchased it approximately 2 years ago, and he did realize that there was a variance in place.

Chairman Mills confirmed that Mr. Lunz understood the variance that was already in place, and decided they would seek a different variance.

Mr. Krey noted that he is confused about the earlier variance which was for a 300 ft. front yard setback, the lot doesn't look to be large enough for that size of a setback.

Mr. Krey clarified that the tree is the only reason they are seeking this setback.

Mr. Lunz responded yes, plus the land is slightly higher further back on the lot with better soil.

Mrs. Burkard asked if there are neighbor notifications.

Mr. Bleuer stated that Neighbor Notifications are on file.

In regards to Public Participation, the following resident spoke:

1. Karen and Keith Tober of 9075 Clarence Center Rd:
 - they are the other half of this formerly joined lot, they welcome their new neighbors but are strongly opposed to this variance request
 - it is not only that they are next to them, but they are directly viewing their in-ground swimming pool
 - privacy issue
 - detrimental to the enjoyment of their property
 - not only visual privacy, but privacy of being overheard as well
 - former variance placed this house way back in the southeast corner, with conditions
 - they can't tolerate having a neighbor this close to enjoying their summers in their backyard
 - would affect their resale value to be so closely in view of a neighbor
 - feels the home must stay up front in line with other homes to preserve character of neighborhood
 - feels they have the option to mirror previous variance with same
 - suggested the applicant flips the floor plan for their proposed home which will block out exposure to their pool and backyard

Mr. Lunz addressed some of these concerns, noting that the idea of flipping the floor plan would not work because the left-hand side of the lot is higher than the right-hand side of the lot. He is unsure how that will work with grading on the property.

Chairman Mills asked about the idea of setting the proposed house further back, like the previous variance had stated.

Mr. Lunz stated that it would be significantly more expensive.

Regarding the house itself, there is only one window that faces the way that Mrs. Tober has mentioned, and if placed back further, that window would be directly behind the pool.

Discussion continued regarding placement of the potential house and potential issues with it.

Mr. Lunz stated that he has planned to plant vegetation for privacy and to mitigate the view along the entire side.

Discussion continued regarding potential options and conditions.

Mr. Drinkard asked about the one tree that has been identified that they would like to preserve.

Mr. McNamara asked what the caliber of the tree is.

Mr. Lunz responded that he estimates it to be approximately 3 ft. in diameter.

Discussion continued regarding the species of the tree.

Mr. McNamara asked how much of the tree canopy covers the neighbor's property to the west.

Mr. Lunz responded that there is one branch that extends approximately 15 ft.

The Board members inspected a photo of the tree that Mr. Lunz would like to preserve.

Mrs. Tober returned to the podium to address the shared driveway, noting that it has been a point of misunderstanding amongst neighbors.

Mrs. Tober explained that the shared driveway is in the shape of a triangle off of Clarence Center Road. There was a pre-existing written agreement that they felt to be punitive and un-neighborly. There is a new agreement that all 4 of the shared neighbors have signed, which states who is responsible for what with the shared driveway.

In regards to the tree, Mrs. Tober noted that both the applicant's parcel and their parcel are heavily wooded, and they have needed to remove numerous trees to improve safety and aesthetics of their yard.

Chairman Mills explained to Mrs. Tober that the applicant has proposed an additional 20 ft. back, which would put them at 165'. Additionally, an arbor vitae screen was suggested for privacy. Would this be acceptable to them.

Mrs. Tober stated that if the applicant's backyard is lined up with her back fence, that was an option that was shared. There have been many discussions between them and the applicants.

Chairman Mills asked if they stated the back of their house would be aligned with the Tober's rear property line, that would be acceptable.

Mrs. Tober responded yes.

Mr. Drinkard asked if the variance is requested principally for one reason, to save one tree and it appears to him as he looks at the property, they are elderly trees. Trees have a life cycle, and Maple trees don't live forever. He would not be willing to grant a variance for one elderly tree.

Discussion continued.

Mr. Bengart asked if the applicant would be interested in tabling this request, in order to mark an area that would be acceptable to the neighbor before returning with an amended application.

Chairman Mills stated that the Zoning Board has the ability to approve, deny, or table this request. After hearing the general sentiments of the board members as well as the neighbor, it may be more prudent to request that the appeal be tabled. But it is wholly up to the applicant.

Mr. Lunz stated that he requests that this appeal to be tabled.

ACTION:

Motion by Ryan Mills, seconded by Patrick Krey to **table** Appeal No. 6.

ON THE QUESTION:

Chairman Mills stated that he would like to see some alternative designs in regards to placement of the proposed home. Some landscape proposals to mitigate the view of the neighbor’s property and pool.

Mr. Drinkard stated that he be in favor of taking down the tree for a new house in an established area. Planting a couple of new trees with their new house, they would be in better shape than needing to eventually remove the old tree.

Mr. Lunz asked where the setback goes to.

Mr. Bleuer explained that it would be to the closest point of the house to the road. In this case, it would be to the garage.

Mr. Bleuer stated that a building inspector has the ability to vary the setback 10’ in either direction, to their discretion depending on site conditions.

Mr. Bengart reiterated that this variance request will be tabled until the applicant requests to return, and to confer with the Planning Office.

Mr. Lunz responded okay.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

Appeal No. 7

David & Elizabeth Sutherland
Residential Single-Family

Town Code Reference:
§229-55(B)

Applicant requests a variance to allow a detached accessory structure (emergency generator) to be located within the front yard setback located at 4970 Ledge Lane.

Appeal No. 7 **tabled** at the request of the applicant.

Appeal No. 8

Richard Friedman
Residential Single-Family

Town Code Reference:

1. §229-55(H)
2. §229-55(H)
3. §229-55(F)

Applicant requests variances:

1. to allow a secondary detached garage (pole barn); and
2. of 664 sq. ft. to allow an 864 sq. ft. detached accessory structure (pole barn); and
3. to allow an accessory structure greater than 400 sq. ft. to use materials different from the principal structure;

located at 5160 Elmcroft Court.

DISCUSSION:

Richard Friedman was present to represent his request, explaining that this request has been previously approved, but that upon further investigation he discovered that the power company has a 15 ft. easement on the back of the property.

Mr. Friedman explained that this would put his building on top of his deck, therefore he needs to move the proposed building over so that it is not located directly behind the house.

Mr. Friedman also explained that the color of the building would be changed to white to match the house, since he is losing the foliage, he had originally planned on using to help the building blend.

Mr. Drinkard noted that previously the proposed structure was going to be brown, but has now been changed to white.

Mr. Friedman responded yes, he is changing it to white to match the house because it will be more visual and in the open.

Mr. Skaine thanked Mr. Friedman for removing the other building, and having the area well staked.

Mr. Krey noted that all of his questions were answered last time, but confirmed that the same condition applies, no business is to be conducted out of the building.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Patrick Krey, seconded by Raymond Skaine to **approve** Appeal No. 8 as written, with the following condition:

1. no business is to be conducted out of the building

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

Meeting adjourned at 7:38 p.m. with a motion by Raymond Skaine.

MOTION CARRIED

Amy Major
Senior Clerk Typist