

**Town of Clarence**  
One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
Tuesday, January 9, 2024

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:

Karen Tober	Keith Tober	Scott Lunz	Shelly Lunz	Cody Lunz
John Hawkins	Libby Hawkins	Mike Bieger		

Motion by Gerald Drinkard, seconded by Richard McNamara, to **approve** the minutes of the meeting held on December 12, 2023 as written.

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

MOTION CARRIED

Chairman Mills stated that the Zoning Board has the ability to approve, deny, or table a request.

**OLD BUSINESS**

**Appeal No. 3** – From December 2023 Meeting

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.

**DISCUSSION:**

Kanika Gulati was present and stated that they are requesting a detached garage to accommodate extra vehicles and storage.

Mr. Drinkard asked Mrs. Gulati if they are the original owners of the home.

Mrs. Gulati responded no; they are the second owners.

Mr. Drinkard asked how long they have lived there.

Mrs. Gulati responded almost 30 years.

Mr. Drinkard explained that with the lot being on two corners, it is compromising in terms of the space and what is allowed.

Mr. Drinkard asked Mrs. Gulati if they have considered alternatives to the proposed structure.

Mrs. Gulati responded no; they felt that this proposed placement would be the least obtrusive.

Mr. Drinkard stated that in the current proposed location, it appears that the proposed garage will block the neighbor's home and view extensively.

Mrs. Gulati stated that they have consulted with their neighbor, and the trees that are currently there will remain. The proposed garage would be placed in front of the trees; therefore, their view would not be impeded.

Mrs. Gulati noted that the neighbors voiced no objection to the proposed garage when they informed them of their request.

Mr. Skaine asked what the setback is for an attached garage in the area in question.

Mr. Bleuer responded that it is as established, at 45 ft.

Mr. Skaine stated that he didn't see any stakes, and asked how far towards the street they plan to build the proposed structure.

Mrs. Gulati stated that she is unsure; the builder placed the stakes as needed.

Mr. Krey asked why the garage needs to be detached.

Mrs. Gulati stated that she thinks it is because of the way their current garage is situated on the lot. They could possibly have it attached to the house, but they are choosing to have it slightly detached.

Mr. Krey asked if a breezeway has been considered, to attach the two garages.

Mrs. Gulati said that they have thought about it but have kept with the detached garage.

Mr. Krey asked Mr. Bleuer if the proposed garage was attached to the existing garage with a breezeway, would it change any of the zoning variances.

Mr. Bleuer responded that it would depend on the design, but would mostly likely still require a frontage variance because it would extend out to the front yard. There would also need a new size calculation.

Mr. Krey noted that his initial reaction to the plans is that the proposed garage would look out of place and awkward.

Mrs. Gulati asked if a separate variance would be needed if they were to include a breezeway.

Mr. Bleuer explained that a breezeway would be considered part of the principal structure. It is very likely a variance would still be required, but would perhaps be a lesser variance.

Mr. McNamara asked what the side yard setback is.

Mr. Bleuer responded that it is 12.5 ft.

Mr. McNamara stated that if the applicant could move the garage closer to the house and further away from the street, then push it further away from the driveway it would be less visual from the street.

Mrs. Gulati stated that one of the reasons they did not want to attach it to the house is they would need to walk all the way around and not have access to the existing pathway to access the backyard.

Mr. McNamara asked what size the space is between the house and the garage,

Mrs. Gulati responded that she doesn't have that information.

Mrs. Burkard agreed that it would be better if it was attached.

Mrs. Burkard asked if there are any rooms of the house located behind the garage, and if there is a fireplace.

Mrs. Gulati stated yes, there is a fireplace and the proposed garage would be adjacent to the family room.

Mrs. Burkard asked if having the fireplace would be an issue if the proposed garage was attached.

Mrs. Gulati responded yes; though she does not know the exact details.

Mrs. Burkard asked if the existing trees will camouflage the entire side of the proposed garage.

Mrs. Gulati stated that they will cover the rear of the proposed garage. The side that faces the yard would not have any trees there as that would be the middle of their yard, but once the structure is built, she would be in agreement to plant foliage to help make it cosmetically pleasing.

Chairman Mills stated that he has concerns with how the proposed structure would fit in with the criteria of the neighborhood. As a Zoning Board, one of the criteria that they are to consider is how something will fit and integrate with the character of the neighborhood. A free-standing larger structure such as what is being proposed may not be perceived as integrated if not attached.

Chairman Mills explained that a breezeway serves as an appealing architecturally aesthetic connection to the principal residence and the accessory structure. Chairman Mills noted that in the subdivision nearby, several detached accessory structures have been attached via a breezeway.

Chairman Mills explained that from an architectural design standpoint, there is a preference to the breezeways, and that would take out at least one of the components of the variance requests.

Chairman Mills stated that based on comments from the Board members, there appears to be a preference for a breezeway.

Chairman Mills explained this is the applicant’s option as to whether the Board acts on the variance request tonight with an approval or denial, or the applicant can request to have the variance tabled so that they can consult with their architect and re-submit with amended plans.

Mrs. Gulati asked if having the proposed structure attached would affect the tax structure differently than having a detached structure.

Mr. Bengart stated that there is no good answer. He can say that generally when adding a structure on to a building, you improve the property and he would say likely there would be some effect on the property taxes.

Discussion continued regarding whether having a breezeway would affect property taxes.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

Mrs. Gulati requested the Board **table** Appeal No. 3 under Old Business.

**ACTION:**

Motion by Ryan Mills, seconded by Raymond Skaine to table Appeal No. 3 under Old Business at the request of Mrs. Gulati.

**ON THE QUESTION:**

Chairman Mills noted that the applicant has heard from the Board members as to what they would like to see, commonly related to the addition of a breezeway.

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

**MOTION CARRIED**

Mr. Bleuer added that the next Zoning Board of Appeals meeting date is February 13, 2024 and the application deadline is January 26, 2024.

**Appeal No. 6** – December 2023 request is superseded

Shelly Lunz  
Residential Single-Family

Applicant requests a variance of 75' to allow a 155' front yard setback located at 9709 Clarence Center Road.

Town Code Reference:  
§229-52(A)(3)

**DISCUSSION:**

Scott Lunz was present to represent this request, stating that they have made some adjustments to try to add more privacy to the neighbor's pool area.

Mr. Krey and Mr. Skaine both noted that they did not have additional questions, they are happy to see the applicant was able to respond to the request of giving the neighbor some privacy in their pool area.

Mr. Drinkard asked what the rationale is for wanting to move the house back from the standard setback.

Mr. Lunz responded that the lot in the back is the highest point of the lot, which would be the best place to build a house. They would also experience less road noise, and would be past the tree that they are attempting to preserve.

Mr. Drinkard stated that the Town Code states that the setback is calculated, and Mr. Lunz is far from what is calculated. If the town law was silent on the issue of setbacks, he would not have an issue with placing the house wherever the applicant chose to, but it is not silent which is concerning to him.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, the following residents spoke:

1. Karen Tober of 9705 Clarence Center Road:
  - have met with the applicant, agreed to multiple points including the house being moved forward so that the front of the house lines up with the rear fence of the Tober's pool. This was agreed upon between both parties, with conditions.
  - concerned about the grade at the fence line between the two properties, does not want water, debris or mud flowing down to their property
  - planting app. 50ft. of vegetation along the west property line, discussed amongst the applicant and neighbor.
  - no business or daycare is to be run from the property
  - stakes were originally misplaced, making it difficult to figure out where the lines were. Once they adjusted the stakes and they were able to determine what lined up where, it became easier to manage.
2. Keith Tober of 9705 Clarence Center Road:
  - did not come to definitive plantings other than advising to not plant Arborvitae, as the deer favor those.
  - shrubbery to be planted 50 ft. along the entire pool fence
  - there is a stone wall that goes around the pool, but due to how the angle of the property declines, it would not hold back water and mud, and eventually it would seep through the stone.

Chairman Mills asked if a plant height had been determined, Mr. Tober acknowledged that he and the applicant can discuss that and decide amongst themselves.

Discussion continued regarding the various possibilities of shrubbery.

Mr. Bleuer stated that any new home development is subject to Building and Engineering review and approval, and they don't allow water shed off of a private property.

Public Participation was closed for this project.

Mr. Lunz returned to respond to the concerns, and stated to Chairman Mills that he is in agreement with all of the sentiments that Karen and Keith Tober have expressed.

Mr. Lunz stated that he would prefer if he and his wife were able to make the final decision on the plantings, but he is hopeful that a mutual agreement can be met.

Chairman Mills asked if they plan to operate a business out of the structure.

Mr. Lunz responded no.

Mr. Lunz added that he did stake out what it would look like if the houses were in line with each other, and he believes it is agreed that it would offer both them and the neighbor less privacy, as their back patio would be aligned with the Tober's pool.

Mr. Krey noted that in terms of plantings along the pool side, keep in mind that something so big that it will block the sun is not desirable either. Also, anything that flowers a lot will drop flowers and seeds etc. into the pool while in bloom.

**ACTION:**

Motion by Patrick Krey, seconded by Raymond Skaine to **approve** Appeal No. 6 under Old Business as written, with the following conditions:

1. applicant plants vegetation along the west property line, the same distance as the pool fence
2. no business is to be run out of the house

**ON THE QUESTION:**

Chairman Mills noted that this is a unique 'L' shaped parcel that has been in existence for some time. The heavy tree presence towards the front of the property specifically one older tree that the applicant would like to preserve. Additionally, due to various setbacks in that location, setting the proposed home a bit farther back for privacy purposes for the neighbor to the west makes sense. Finally, based on the size of the parcel, it does not seem that it will affect the character of the neighborhood.

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

**MOTION CARRIED**

**Appeal No. 7** – From December 2023 Meeting  
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.

**DISCUSSION:**

David and Elizabeth Sutherland were present to represent their request, adding that they'd like to install an emergency generator on their property. Where they are requesting to have it located is the best location on their property with the most direct access to the gas meter.

Mr. Krey noted that the air conditioner is already located on the property, this will not add any negative views.

Mr. Krey asked if they are planning any landscaping around the generator.

Mrs. Sutherland responded that they will add any landscaping that the board wishes. There is a Weeping Cherry Tree that when in bloom, hides the area nicely.

Chairman Mills stated that based on the location on Ledge Lane, some landscaping would be beneficial. The tree does a good job, but some additional foliage would be nice from an aesthetic perspective. Specificity will be left up to the applicant's discretion.

Chairman Mills asked if landscaping was made a condition of approval, would Mr. and Mrs. Sutherland be in agreement to it.

Mr. Sutherland responded yes.

Chairman Mills noted that placing the generator on the other side of the house would be more costly, as well as too close to the neighbor.

Mr. Sutherland explained the layout of the property, and why this proposed area was the better choice.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, no one spoke.

**ACTION:**

Motion by Gerald Drinkard, seconded by Richard McNamara to **approve** Appeal No. 7 under Old Business as written, with the following condition:

1. landscaping of the applicant's discretion placed in front of the generator on the east side of the generator.

**ON THE QUESTION:**

Chairman Mills requested clarity regarding the species of landscaping.

Mr. Drinkard suggested Boxwoods or similar, at the homeowner's discretion but not to be specified within the conditions of approval.

Mr. Sutherland asked if foliage that at least covers the height of the generator is preferred.

Mr. Drinkard responded yes.

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

MOTION CARRIED

**NEW BUSINESS**

**Appeal No. 1**

Mark Clement  
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 692 sq. ft. to allow an 892 sq. ft. detached accessory structure (pole barn); and
3. of 3' to allow a 19' tall detached accessory structure (pole barn); and
4. of 1' to allow a 10' 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 9712 Keller Road.

**DISCUSSION:**

Mark Clement was present to represent his request, explaining that he would like to place a 26 x 32 sq. ft. pole barn on his property to be used for storage, and a place to work on his woodworking hobby.

Mrs. Burkard noted that she did not see any other similar structures in the area, and whether the neighbors objected to this structure going up.

Mr. Clement responded no; they are on board.

Mrs. Burkard noted that Mr. Clement has chosen to place the proposed structure to the rear of his backyard because of his gardens.

Mr. Clement responded yes; he has multiple different gardens, plus his children play in the backyard and placing the proposed structure in the middle of the yard would basically take away a large portion of his back yard property, and they won't be able to see the kids when they are out there.

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

Mr. Clement responded no.

Mr. McNamara asked if Mr. Clement plans to run a driveway back to the proposed structure.

Mr. Clement responded no.

Mr. McNamara asked if utilities would be run to the proposed structure.

Mr. Clement responded yes; he would like to run electric for sure.

Mr. Krey asked how large Mr. Clement's home is.

Mr. Clement responded that his residence is 2,300 sq. ft. and this proposed structure is 892 sq. ft.

Mr. Krey asked Mr. Clement if he is aware of any similar pole barns in the area.

Mr. Clement responded that there is one on Herr Road near where his house is, and two on Keller Road all within approximately ¼ mile from his property.

Chairman Mills asked Mr. Bleuer if the properties with these pole barns are agricultural or residential zones.

Mr. Bleuer responded that it is a mixture of both.

Mr. Clement noted that the ones he is referring to are single-family.

Mr. Krey asked why the materials proposed are different than what is on the principal structure.

Mr. Clement responded that it is cost related.

Mr. Skaine stated that he does not think it will look as good as people thinks it will. As he drove around the area, there are no similar size structure, and this would stick out like a sore thumb.

Mr. Skaine asked Mr. Clement why he wants a 10 ft. door.

Mr. Clement noted that Stately Builders recommended it, but also, he needs the room to be able to get his truck in and out to work on it, as well as potentially a tractor in the future.

Mr. Drinkard stated that as previously discussed, the part that bothers him is the proximity to the neighbors to the north. The proposed pole barn would be located at the very back of his property, locating it close to the neighbor's property.

Mr. Drinkard asked Mr. Clement if he would consider moving the proposed pole barn 75 ft. to 100 ft. forward, closer to the house and moving the gardens to the backside of the pole barn.

Mr. Clement responded that he would consider it, but if he had to do that then he would not put up the pole barn. Moving it forward essentially makes the land behind it unusable in his opinion. If the kids are outside and they are behind the barn, he and his wife can't see them from their backyard and porch.

Furthermore, Mr. Clement explained that he doesn't see his neighbors much, they don't have much interaction and he does not think it will be an issue for them.

Referring to the renderings that were submitted with the application, Mr. Drinkard asked Mr. Clement for clarity on the doors.

Mr. Clement stated that he only wants one 10 ft. door in the middle of the proposed structure.

Chairman Mills stated that he shares similar concerns as the other board members in regards to character and aesthetics, because there are no similar structures in the immediate neighborhood. It is a fairly large structure and there are several homes behind the property that would be in direct view of the proposed structure.

Chairman Mills asked Mr. Clement if he would be willing to reduce the size.

Mr. Clement responded no.

Chairman Mills confirmed that the materials would not match the house, and the proposed structure would have a metal-clad roof and siding.

Mr. Clement responded yes.

Chairman Mills noted that the photos provided with the application are not what the proposed structure would actually look like, they are just to give ideas of what Mr. Clement would like.

Neighbor Notifications are on file, no comments were received.

In regards to Public Participation, the following resident spoke:

1. Mike Bieger of 5940 Elm Street:
  - in support of the proposed structure, helped the applicant stake it and the location makes sense
  - does not believe it will cause a negative impact to the neighbors

Mr. Krey explained that there are a lot of variances being requested, and when asked by board members if Mr. Clement would be willing to amend some of them, he did not agree to. Mr. Krey feels that some of the suggestions would be beneficial to the proposed project such as the materials and size of the proposed structure.

Chairman Mills asked Mr. Clement if he would be willing to adjust the size or any of the other concerns in order to mitigate the impact of the proposed structure would have on the character of the neighborhood.

Mr. Clement responded that he struggles with that because only 6-7 houses away is a similar structure that was recently built that is over the code. He would be flexible with the color of the metal, but is set on the size and would not be willing to adjust that.

#### **ACTION:**

No motion, request **failed**.

Meeting adjourned at 6:30 p.m. with a motion by Raymond Skaine.

Amy Major

Senior Clerk Typist