Town of Clarence

One Town Place, Clarence, NY

Zoning Board of Appeals Minutes Tuesday, May 13, 2025

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

Zoning Board of Appeals members present:

Chairman Ryan Mills Patrick Krey Richard McNamara

Gerald Drinkard Steven Dale

Zoning Board of Appeals members absent:

Town Officials present:

Director of Community Development Jonathan Bleuer Deputy Town Attorney David Donohue Councilman Paul Shear

Other Interested Parties:

Michael Arno Joe Lombardo Penny Favale

Steven Favale Sean Hopkins

Motion by Gerald Drinkard, seconded by Steven Dale, to **approve** the minutes of the meeting held on April 8, 2025 as written and published.

Gerald Drinkard Aye Richard McNamara Aye Ryan Mills Aye

Patrick Krey Aye Steven Dale Aye

Motion by Gerald Drinkard, seconded by Richard McNamara, to **approve** the minutes of the meeting held on March 11, 2025 as written.

Gerald Drinkard Aye Richard McNamara Aye Ryan Mills Aye

Patrick Krey Aye Steven Dale Aye

MOTION CARRIED

Pledge of allegiance led by Chairman Ryan Mills.

NEW BUSINESS

Appeal No. 1

Joseph Lombardo Agricultural Flood Zone

Town Code Reference:

- 1. §93-19(D)(1)
- 2. §93-19(D)(1)

Applicant requests variances:

- 1. of 2.03 acres to allow a proposed 2.97-acre property to contain an existing pond; and
- 2. to allow an existing pond to be closer than 100' to proposed property lines;

located at 7980 Northfield Road.

Joseph Lombardo was present to represent the project.

DISCUSSION:

Mr. Lombardo states he is looking to create a 3-acre lot minor subdivision from the parent parcel of 50 acres. Due to the existing layout of the property, there is no way to create this parcel without requesting a variance. He is subdividing the property, owned by his mother, to build a single-family home for himself on the lot.

Mr. Drinkard said there is environmental approval from the Planning Board on 4/16/2025 on file. He asked how the pond came into existence and the specifics of size and depth.

Mr. Lombardo was not sure how it came into existence. He said it is 10-15 feet deep, there is no inlet or outlet from the pond.

Mr. Drinkard asked what was dumped in the pond and wondered if horse manure was dumped there.

Mr. Lombardo states he would not do anything like that and it would fill up quickly if that were done.

Mr. Bleuer clarified there was no actual onsite analysis of the pond. From a planning perspective the pond is pre-existing and nonconforming as such.

Mr. McNamara asked, since the lot is almost 3 acres, if there was a reason Mr. Lombardo could not take more land going west away from the road.

Mr. Lombardo said as the property sits there is a ditch that naturally geographically divides the lots and he would like to keep as much for the farm parcel as possible. He would like to take a minimum amount of land for the house. He believes leaving as much land as agricultural is in line with the planning goals of Clarence.

Mr. McNamara asked if the house is for Mr. Lombardo personally.

Mr. Lombardo said that is correct.

Chairman Mills asked what size house Mr. Lombardo is planning to build.

Mr. Lombardo responded with approximately 1,600 square feet.

Chairman Mills was also inquiring why he did not just make the parcel size larger to avoid another variance. He asked if there was any other hardship than the geography of the land.

Mr. Lombardo said it comes down to the amount of taxable value on the land. He would prefer not to pay additional taxes on land that simply has brush and is not usable land.

Chairman Mills asked what Mr. Lombardo would do if the variance was denied.

Mr. Lombardo said if it was denied, he would consult with an attorney to see what his options are to appeal the decision and go forward from there. He cannot speak as to what he would do.

Mr. Krey asked about drainage lines to or from the pond from other parts of the property.

Mr. Lombardo said there are none but he would like to improve the conditions when the house is built with an engineered drainage plan. He is seeking to improve drainage conditions on the property.

Mr. Dale had no questions.

Neighbor Notifications were sent to 8045 and 8070 Northfield Road, and no comments were received.

In regards to public participation, no one spoke.

ACTION:

Motion by Chairman Ryan Mills, seconded by Steven Dale to **approve** New Business Appeal No. 1 only as it relates to the second variance request to allow an existing pond to be closer than 100' to the proposed property lines.

ON THE QUESTION:

Chairman Ryan Mills pointed out the applicant is seeking 2 variances. The first variance can be alleviated by a larger transfer of land. The variances would be mitigated from 2 to 1, having less of an adverse impact on the character of the neighborhood. This is a situation that is self-created and could be alleviated through the additional land transfer.

Hearing nothing further on the question, Chairman Mills called for a vote:

Steven Dale Aye Patrick Krey Aye Ryan Mills Aye Gerald Drinkard Aye Richard McNamara Aye

Jonathan Bleuer let the applicant know if he chooses to expand the lot to 5 acres, that can be handled through an administrative action at the Planning Department, which would then allow him to fulfill all the conditions of the minor subdivision and still get his lot. If he seeks something else, to feel free to contact the Planning Department to discuss the details.

Mr. Lombardo was in agreement.

MOTION CARRIED

Appeal No. 2

Gregory Wieczorek Agricultural Rural Residential Applicant requests a variance of 2' to allow a 6' fence to be located within the front yard setback located at 5940 Strickler Road.

Town Code Reference:

1. §101-3(C)(2)

Greg Wieczorek was present to represent the project.

DISCUSSION:

Greg Wieczorek stated he is looking to fence around his property line for his child and dogs.

Mr. Dale stated he drove the intersection from both Strickler and Clarence Center. He does not feel a 6-foot fence would impede the visual in either direction.

Mr. Wieczorek said he tries to be a fair neighbor to everyone and is concerned with the safety of neighbors entering and exiting their driveways.

Mr. Krey asked why the fence needed to be 6 feet high instead of 4 feet.

Mr. Wieczorek explained he has a toddler who is almost 4 feet tall.

Mr. Krey asked if he thought the dog could jump a 4-foot fence.

Mr. Wieczorek stated probably not but he believed his child definitely could.

Chairman Mills asked about the fence material and if it would be a pressure treated fence.

Mr. Wieczorek responded yes.

Mr. McNamara had no questions.

Mr. Drinkard said the west side of the property along the driveway seems physically very close to one of the neighbors. Mr. Drinkard asked if Mr. Wieczorek would consider moving the fence 3-5 feet back to make it look better.

Mr. Wieczorek said he spoke with the neighbor at the back of his property and he is okay with the fence where it is proposed as long as he can mow his grass.

Neighbor Notifications are on file, 5930 Strickler Road and 10195 Clarence Center Road. No comments were received.

In regards to public participation, no one spoke.

ACTION:

Motion by Peter Krey, seconded by Gerald Drinkard to approve Appeal No. 2 as written.

ON THE QUESTION:

Mr. Krey said due to the unique nature and position of the lot, it will not have an adverse effect on the neighboring properties or alter the character of the neighborhood.

Steven Dale Aye Patrick Krey Aye Ryan Mills Aye

Gerald Drinkard Aye Richard McNamara Aye

MOTION CARRIED

Appeal No. 3

The Megan Arno Residence Trust Agricultural Rural Residential

Town Code Reference:

- 1. §229-41(A)
- 2. §229-41(A)

Applicant requests variances:

- 1. to allow a 237' principal structure front yard setback located at 5900 Kraus Road; and
- 2. to allow a 237' principal structure front yard setback located at 5920 Kraus Road.

Mr. McNamara recused himself from New Business Appeal No. 3.

DISCUSSION:

Sean Hopkins, on behalf of the Megan Arno Residence Trust, along with Mike Arno, to represent the applicant.

Mr. Hopkins stated that on December 10, 2024 a variance was requested for minimum lot frontage of 143.5 ft. when the requirement was 150 ft. for the listed property. They are now asking for a deviation for the front yard setback. Mr. Hopkins explained the required setbacks for the street is 156 ft determined by the Planning Department and the proposed setback for the two new homes is for 237 ft. Keeping in mind, 237 feet on a lot is actually a depth of 829 ft for the lot. Both lots are sizable at 2.73 acres. Mr. Arno built the three homes to the north; one is set back 234 ft and the another is 230 ft. One of the homes to be built will be 4,100 sq. ft. and the other will be 3,000 sq. ft.

There is a mixture of big homes on larger lots and smaller homes on small lots in the area. The parcels to the south, 5830, 5840 and 5850 Kraus Road, average approximately 75 ft. setbacks. That dramatically reduces the established setback within 500 ft. The benefits are clear, the surrounding homes have similar setbacks and there are no detriments associated with granting this variance.

In connection with the application of the balancing test, there are 5 criteria to consider:

- 1. Whether or not there is an undesirable change to the character of the neighborhood or detriment to nearby properties. The answer is no, in fact, the home size, location and configuration will be consistent with community character. The homes will serve as an enhancement to the area. There are no detriments to the neighborhood. The neighbor notification letters have no negative comments.
- 2. The second criteria is whether there are any feasible alternatives that the applicant could pursue that would eliminate the need for the requested relief while still allowing him to maintain the benefits he is seeking. The answer is no. Again, the homes are appropriately sized at the appropriate location and forcing them to comply with a standard setback is not a feasible alternative.
- 3. The third criteria is whether the requested relief is substantial and whether any harm will result. Absolutely no harm will result from the granted request for relief.
- 4. The fourth criteria is whether the granted request for relief will have adverse environmental or physical impacts. This is a type 2 action, pursuant to State Environmental Quarter Review Act. Each of these homes will require a building permit from the Town of Clarence Building Department which will ensure compliance with the New York State Building Code, including energy, fire safety, etc.
- 5. The fifth criteria is whether or not the alleged difficulty is self-created. As this Board is well aware, even if the Board finds it is a self-created difficulty, that does not prevent you from granting the request for relief. As the applicant, with knowledge of the underlying AR Zoning, we would accept that it is a self-created hardship. We would remind you of the diverse setbacks in that immediate neighborhood with various size homes on various size lots. There is strong justification based on the overall balancing test and four of the five criteria.

Mr. Drinkard wanted to clarify if there were two homes to be built from the original request as well. He had no further questions after the clarification was supplied by Mr. Hopkins regarding two homes to be constructed.

Chairman Mills asked for the applicant's thoughts on the tree line to the north bordering 5930 Kraus Road. If the variance is granted, he believed 5930 Kraus Road would have some view of the new residence.

Mr. Arno stated he has spoken to both neighbors and has told them he will plant tree lines. Chairman Mill said we will make a condition of the variance to put up a tree line from the corner of the new residence to the front of 5930 Kraus Road.

Mr. Arno agreed.

Mr. Arno also said at 5900 Kraus he will place the tree line even with the house and go past the pool for privacy between 5880 and 5900 Kraus Road.

Chairman Mills said that will allow privacy on both sides and mitigate the condition of close neighbors in both directions.

Mr. Arno said both neighbors signed the forms and the neighbor at 5880 wants the new home even with his house.

Chairman Mills said they need to consider how the new homes will impact the neighbors at 5880 and 5930 Kraus Road and future occupants, along with the overall environmental impact.

Mr. Arno agreed, adding that he also prefers his privacy.

Chairman Mills asked Mr. Arno what he is considering planting.

Mr. Arno stated that they are a type of deep-rooted pine tree.

Chairman Mills asked if they state a pine tree or similar, at least 4 ft. in height, would that be agreeable.

Mr. Arno stated 6 ft., and reiterated that the trees will be deep-rooted.

Mr. Krey asked if there has been any consideration given to the spacing of the pine trees.

Mr. Hopkins responded, explaining that generally they should not be planted any closer than 15 ft. because they quickly grow in together, weakening the roots.

Mr. Bleuer stated that 30 ft. staggered would give the best effect.

Mr. Hopkins stated that they propose every 15 ft. minimum.

Mr. Krey reviewed the potential conditions regarding the trees and spacing.

Mr. Arno explained that he plans to start in the rear yard of 5880 Kraus Rd. and extend back past the pool. The front corner of the new home to back behind the pool with evergreen trees or similar.

Addressing Mr. Hopkins, Mr. Dale stated that in his presentation he mentioned the new houses being 3,000 sq. ft. and 4,000 sq. ft. and asked if he has any idea what the existing three houses are that are basically at the same level.

Mr. Arno stated that the house at 5880 Kraus Road is 6,400 sq. ft., 5850 Kraus Road is 3,500 sq. ft., and 5840 Kraus Road is 4,100 sq. ft.

Neighbor Notifications are on file, 5880 and 5930 Kraus Road, no comments were received.

In regards to public participation, no one spoke.

ACTION:

Motion by Steven Dale, seconded by Patrick Krey to approve Appeal No. 3 with two conditions:

- 1. The applicant plant evergreen or similar trees at least 6 ft. in height spaced no greater than 15 ft. apart at the front of the house at 5930 Kraus Road up to the rear of the new home at 5920 Kraus Road.
- 2. The applicant plant evergreen or similar trees at least 6 ft. in height spaced no greater than 15 ft. apart at the front of the house at 5900 Kraus Road to the back of the pool at 5880 Kraus Road.

Mr. Arno understood the conditions and agreed to both.

ON THE QUESTION:

Mr. Krey stated this is a unique road with a mix of larger homes set back farther and smaller homes on smaller lots. This will not be out of character for the neighborhood. The conditions imposed and accepted by the applicant will mitigate concerns of the neighboring properties.

Chairman Mills said the lot sizes at 5900 and 5920 Kraus Road closely resemble the lot sizes at 5880, 5850 and 5840 Kraus Road, both the parcel size as well as size of the home.

Gerald Drinkard	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Aye

MOTION CARRIED

Appeal No. 4

Steven & Penny Jo Favale Residential Single-Family Applicant requests a variance of 4' to allow a detached accessory structure (pavilion) to be set back 2' from the principal structure located at 8115 Miles Road.

Town Code Reference: §229-55(E)(1)

Steven Favale and Penny Favale were present to represent the project.

DISCUSSION:

Mrs. Favale stated that they are requesting the variance of 4 ft. for the free-standing pavilion that they would like to place on their back patio. They have chosen a larger, heavier pavilion so that it does not blow over in to the neighbor's yard. They did not realize when they got their permit that it needed to be set back a minimum of 5 ft. from their house, which is why they need the variance.

Mrs. Favale stated that they have their grill and little bar under the pavilion.

Mr. Dale asked if there any other utilities located under the pavilion aside from the grill, and if there is electricity.

Mr. Favale stated that there is electricity.

Mr. Dale stated that the required distance between the house and the accessory structure comes from the Fire Marshall.

Mrs. Favale responded that it is not really a building, it is a pavilion – a cover to go over the grill and the bar. Their concrete pad only extends out so far, and it would be a substantial amount of work to move it out further. The pavilion covers almost to the outside edge of the existing concrete pad.

Mr. Dale stated that it puts him up against the fire marshal.

Mr. Krey asked if they had the concrete pad poured specifically for the pavilion, or was it existing.

Mrs. Favale responded that it is part of their patio.

Mr. Krey asked if the only thing that is new is the pavilion, they did not have the concrete poured specifically for the pavilion.

Mrs. Favale responded that is correct, it was a pavilion kit that they assembled and placed on the concrete.

Mr. Krey asked how difficult it would be to extend the concrete pad away from the house to place the pavilion on.

Mrs. Favale explained that they do not have a very large yard, and it would place the pavilion more in the middle of their yard.

Mr. Favale added that it would be in conflict with one of the islands that they already have. The posts would end up dead center of the island closest to the house.

Mr. Krey explained that Mr. and Mrs. Favale are describing a hardship.

Mrs. Favale noted that they do not have a large, deep yard and they wanted to keep the pavilion in line with the patio. The pavilion is approximately $4\frac{1}{2}$ feet, it is not very large.

Mr. Krey asked if the pavilion is bolted in to the ground.

Mrs. Favale responded no; it is just heavy timber. Technically they could move it, but it would be difficult due to the weight.

Chairman Mills asked Mr. Bleuer if this is Town Code or Fire Code.

Mr. Bleuer explained that the 6 ft. standard is Town Zoning Code, which is measured from foundation line while the Building Department uses the New York State Code which looks at it from the eaves.

Mr. Bleuer added that while he can not answer it, from a Town Building perspective, if the structure was attached to the house, it would be considered part of the principal structure. From a zoning perspective, it would meet Town Code simply to be shifted so that it is touching or fastened to the house.

Mr. McNamara stated that he did speak to the Building Department about this subject, the 6 ft. is for the fire code from property line to property line, the same property with a building right next to it. They had no concerns with a fire, it was merely the Town Code.

Chairman Mills asked Mr. Bleuer if this particular setback is for both pavilions and regular structures.

Mr. Bleuer stated that the Building Department deems this as an accessory structure.

Chairman Mills noted that it is not distinguished whether it is a shed, pergola, or similar.

Mr. Bleuer responded that is correct.

Mr. McNamara confirmed that if it was attached it would be ok.

Mr. Bleuer stated that from a Zoning Code, yes.

Discussion continued.

Noting that he is speaking only for Town Code, Mr. Bleuer explained that there may be several New York State Building Code restrictions if the structure was attached to the principal structure.

Mr. Drinkard confirmed that the roof is metal, and the pillars are wood.

Mr. Favale responded yes.

Mr. Drinkard asked what they do under the pavilion.

Mr. Favale stated that it is merely a shelter covering a bar and a grill.

Neighbor Notifications were sent to 8105 Miles Road and 8125 Miles Road no comments were received.

Regarding Public Participation, no one spoke.

Mr. Drinkard asked if in terms of remedy, to comply with the code have they considered other ways to adjust this other than extending the patio with cement, to put uni-blocks in and move the whole thing out.

Mrs. Favale stated that it would be a substantial cost, and would probably be better to remove the pavilion.

Mr. Favale added that it would no longer provide shelter for the bar island, it would not serve the purpose that it was erected for.

Mr. Drinkard noted that the specification for accessory buildings is a fairly general term in an application like this where the structure has no sides, versus an accessory building that has sides. There is less ability should the grill flame out to create an issue whereas it was in a confined space.

Mr. Favale stated that the grill has an aluminum frame and stone finish, it is not flammable.

ACTION:

Motion by Richard McNamara, seconded by Gerald Drinkard to approve Appeal No. 4 as written.

ON THE QUESTION:

Mr. Drinkard stated his second was contingent upon the generalness of the specifications of what constitutes an accessory building, this with a metal roof and heavy pillars and far enough from the house. Therefore, he was comfortable seconding this motion.

Chairman Mills pointed out the structure has 4 columns, has support mechanisms, it does not have 4 full walls like a shed or similar. The impact is minimal in being closer to the primary residence.

Hearing nothing further on the question, Chairman Mills called for a vote.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Steven Dale	Nay		

MOTION CARRIED

Appeal No. 5

Mark Dunlap Residential Single-Family Applicant requests a variance of 7' to allow a 5'6" principal structure side yard setback located at 5331 Greenhurst Road.

Town Code Reference: §229-52(B)

DISCUSSION:

Paul Piowarski is present on behalf of Mark Dunlap to represent the project. Mr. Piowarski explained that the applicant would like to enlarge a current single-car garage to a two-car garage and a master suite.

Mr. Piowarski stated that there will still be almost 6 ft. to the adjacent property line, the addition does not look like an addition, but rather an extension of the existing home.

Mr. Piowarski added that due to recent medical reasons, Mr. Piowarski would like to be able to park both his and his wife's vehicles in the garage.

Chairman Mills asked Mr. Piowarski what his relationship is to the applicant.

Mr. Piowarski responded that he provided the architectural drawings for the applicant, Mr. Dunlap. Mr. Piowarski's address is 8 Anderson Place, Depew, New York.

Mr. Bleuer stated that there is a letter on file authorizing Mr. Piowarski to speak on Mr. Dunlap's behalf.

Mr. Krey asked if there is a way to achieve the same purpose by extending the garage straight back rather than adding on to the side.

Mr. Piowarski stated that the current garage is approximately 17 ft. and does not have room for 2 vehicles. It would not be feasible without encroaching on the front yard as well.

Mr. Dale asked if Mr. Piowarski knows what the south elevation would look like, which is the side that would face the neighbor.

Mr. Piowarski stated that it is a standard hip-style roof, aside from a window at the top of the tub, there are no windows currently planned for that side. Mr. Piowarski explained that he did not want to get in to too many expenses with the applicant before the variance was approved.

Mr. Dale stated that with moving the proposed structure 6 ft. closer to the neighbor, they need to see something in the way of elevations.

Mr. Piowarski added that he does not think the applicant would have any issues with adding a few windows to the proposed garage structure. There is a walk-in closet and a shower along that elevation as well.

Mr. Dale stated that he would like to see a few more windows added to break up the side.

Mr. Piowarski agreed.

Mr. McNamara asked if the overhang will be fire rated, due to the distance of less than 5 ft.

Mr. Piowarski stated that he would like to avoid having to do that, therefore he will agree to a condition of a 6 ft. side yard setback.

Mr. Drinkard noted that the property is very well kept and it appears that the house has a substantial amount of brick on it.

Mr. Drinkard asked if it is siding on the east elevation and brick on the west.

Mr. Piowarski responded that the house currently has brick, and he is hoping to salvage enough brick that once the large overhead door is installed to be able to fill in the void with the salvaged brick.

Regarding the south elevation, Chairman Mills asked if that would be vinyl siding, and if the Board made it a condition that two additional windows were added to the south wall, would that be agreeable.

Mr. Piowarski responded yes, that would not be a problem.

Chairman Mills noted that due to the lot size and the layout, there are not any other options.

Chairman Mills asked Mr. Piowarski if either him or the applicant have spoken to the neighbor at 5315 Greenhurst Road.

Mr. Piowarski stated that he believes Mr. Dunlap personally spoke with the neighbors regarding this proposed project, and the neighbor on the proposed garage side specifically had no issues and welcomes the betterment to the neighborhood.

Mr. Bleuer stated that Neighbor Notifications are on file, 5330 Vista Avenue, 5315, 5330 and 5337 Greenhurst Road, no comments received, but they also did not receive any objections.

Chairman Mills asked if the two sheds that are in the rear of the property will be staying.

Mr. Piowarski responded that Mr. Dunlap plans to move at least the one shed, due to the proximity of it to the proposed garage. It would remain on the same parcel.

Chairman Mills noted that there is currently brick along the south side, and asked what the plan is for it.

Mr. Piowarski responded that it will all be removed and used for the front façade of the proposed garage.

Chairman Mills asked if the Board placed a condition that the front façade is to be brick, would that be agreeable.

Mr. Piowarski responded yes.

Chairman Mills asked if there will be enough brick salvaged to do a quarter-height along the south elevation.

Mr. Piowarski responded that he is unsure. It is not as easy to salvage brick as it would seem, because of how it is tied in to the wall, specifically with older homes such as this one.

Chairman Mills asked Mr. Piowarski what he thinks from an aesthetic perspective.

Mr. Piowarski explained that possibly to the door as a wrap might be considered.

Regarding Public Participation, no one spoke.

Mr. Krey asked if the first variance is being amended from a 7 ft. variance to a 6 ft. variance.

Mr. Piowarski added that it should become a 6'6" variance.

Discussion continued.

ACTION:

Motion by Patrick Krey, seconded by Mr. McNamara to **approve** Appeal No. 5 with the following conditions:

The first variance request is amended to state of 6'6" to allow a 6' principal structure side yard setback.

- 1. Two or more windows to be added to the south side of the structure, in addition to the proposed bathroom window.
- 2. The front façade is to utilize brick to match the existing home.

ON THE QUESTION:

Mr. Bleuer asked for clarification of the condition no. 1 and asked if they wanted a total of two windows including the bathroom window or two additional windows.

Mr. Krey amended his motion to state two or more additional windows. Mr. McNamara amended his second to condition no. 1

Mr. Piowarski also asked to be sure on the west elevation where they are going to fill the void with brick and the south elevation is not going to be brick.

Chairman Mills confirmed Mr. Piowarski's question.

Mr. Drinkard said the home is very orderly, and it fits in nice with the neighborhood and will not deter from the neighborhood and will only add character to the surrounding homes.

Mr. Dale asked if there was going to be any landscaping to be completed on the south side.

Mr. Piowarski said that he is not sure and originally talked about putting in an additional sidewalk for guests but they suggested not to do this. He does not know what the intensions are at this point.

Gerald Drinkard	Aye	Richard McNamara	Aye	Ryan Mills	Aye
Patrick Krev	Ave	Steven Dale	Ave		

MOTION CARRIED

The meeting adjourned at 6:32 p.m. with a motion by Richard McNamara.

Amy Major Senior Clerk Typist