

Town of Clarence
One Town Place, Clarence NY
Zoning Board of Appeals Minutes
Tuesday November 12, 2013
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D’Amato	Patricia Burkard
Jonathan Hickey	Gregory Thrun

Town Officials present:

Director of Community Development James Callahan
Junior Planner Jonathan Bleuer
Town Attorney Lawrence Meckler
Councilman Peter DiCostanzo

Other interested parties present:

Kevin Kelly	Elizabeth Kelly
Mark Hanes	Barbara Greis

Motion by David D’Amato, seconded by Gregory Thrun, to **approve** the minutes of the meeting held on October 8, 2013, as written.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Abstain

MOTION CARRIED.

Appeal No. 1

Kevin & Elizabeth Kelly
Residential Single Family

Requests the Board of Appeals approve and grant a 5’ variance to allow for a 10’ side yard setback for a proposed 96 square foot accessory structure at 9292 Hunting Valley South.

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

DISCUSSION:

Kevin and Elizabeth Kelly are present.

There are three (3) neighbor notification forms are on file.

Mrs. Kelly said they have made improvements to their property which includes the installation of a pool. They efficiently use the storage space in their garage and attic but have no basement. They would like to build a shed for storage of the pool equipment. There is only one location on the property where the shed could go without detracting from the value of the home. The Kelly's have an unusual lot line which is on an angle and on a corner lot. The siding and architectural shingles used for the shed would be the same as what is on the house.

In response to Mr. Hickey's question, Mrs. Kelly clarified that the closest the shed would be to the side property line is 5'. Mr. Kelly said the shed is about 6.6' high. The Kelly's have lived at this address for 15 years. The majority of the proposed shed will be hidden by the existing fence. Put in any other location, the shed would be in the view of either the neighbors or the Kelly's.

Mr. Mills asked for details of the foundation of the proposed shed. Mr. Kelly said they have a frame set up, it will be a concrete slab/floor. There will be two (2) windows on the shed and double doors. There will be no other pavement or concrete associated with the shed.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 1 as written.

Jonathan Hickey	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

Mark A. Hanes
Residential Single Family

Requests the Board of Appeals approve and grant a 3' variance to allow for a 5' rear yard setback for an existing structure at 9585 Hartwig Drive.

Appeal No. 2 is in variance to §229-55 (E)(1).

DISCUSSION:

Ryan Mills recused himself from participating in the discussion and the vote for this appeal.

Neighbor notification forms are on file.

Mr. Hanes is present and explained that he and his wife just purchased the property and the only survey for the property was dated back to July 1949, which does not show the garage. Mr. Hanes submitted an updated survey dated September 2013 which does show the garage. Both surveys are on file. Mr. Hanes pointed out that the garage is 76.9' off the lot line and the rear of the garage is 77.1'. It does not meet the 5' side lot requirement for the second piece of property. He wants to make the garage comply with the lot next door. The garage is currently 1.9' away from the lot line and 2.1', front to rear.

Mr. Hanes bought the house a couple months ago as one large piece of property; he closed on it a week and a half ago. Mr. Hickey asked what prompted the need to get a second survey if the applicant got through the whole process of closing on the house without it. Mr. Hanes said in order to close he had to

get a survey, so when he got the survey it showed the measurements. When the previous owner built the garage the side lot line was not a concern because he owned both lots. Mr. Hanes wants to build a home on the vacant lot for himself and his wife.

Barbara Greis, of 9605 Hartwig Drive, is present with concerns on Appeal No. 3. She has lived in her house since 1968, she is the original owner. She said existing houses and another garage are set back even further and closer to the line. She is concerned but cares about what Mr. Hanes wants to do because it fits in with the neighborhood.

Mr. Hanes said the existing setback is 45'.

Mr. D'Amato asked what size the proposed house will be. Mr. Hanes said it is very limited because he has to meet the front and back setbacks, which are both 45'; he also has to meet the side yard setbacks which are 12.5'. This does not leave a lot of square footage for what can be built. Mr. Hanes has family who would be interested in purchasing the existing house.

Ms. Greis said her concern is if the setback of the proposed house meets the requirement of what the code is now, it would be set further back than all the other houses on the street. Mr. D'Amato said this will definitely change the whole character of the neighborhood.

Mr. Hanes explained that he has family in the immediate area and wants to live in the same area so he can walk to their homes. He also wants to live in this area so he can walk to the four corners or to the bank.

Mr. D'Amato sees this variance changing the landscaping of the area. He is not sure that just because it will fit, that building a house is warranted.

Mr. Hickey noted that there are 5 criteria that the Board looks at to see if this request is the right thing to do or not. He asked Mr. Hanes what financial issues he might incur if this doesn't go through. Mr. Hanes thought there was a good possibility for his request to be granted because the original map cover showed two lots. What threw him off was the 45' setback as opposed to the old 37' setback requirement. He thought he could build a home there when he bought the property, it was not an afterthought.

Mr. Callahan noted that the map cover identifies that it always has been a lot, but the upgrade to the Zoning Law restricts what can be built on the lot, as Mr. Hanes has already pointed out.

Mr. Hanes said an approximate size of the house would be 1600-1700 square feet, ranch style. The neighborhood consists of ranches and cape cods. He does not feel a two-story is in the best interest of the neighborhood.

Ms. Greis said she has no intention of moving. If Mr. Hanes can build what is in line with the existing homes, it wouldn't change the character of the neighborhood other than being there; the neighbors have discussed this and all agree. Ms. Greis' garage is on the side of her property that faces the empty lot and her living quarters are on the other side of the house. She confirmed that the lots on the street are the same size as the one Mr. Hanes is asking for.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 2, as written.

ON THE QUESTION:

Mr. Hickey said it is important to note that this variance which speaks to the rear yard setback is not a substantial variance, it does not result in any type of adverse impact nor does it result in any undesirable change to the neighborhood in and of itself. There has been unique testimony and information on the history of the area given by the applicant and a neighbor that further indicate that most factors weigh in favor of granting this variance request.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Nay
Ryan Mills	Recuse	Daniel Michnik	Aye

MOTION CARRIED.

Appeal No. 3

Mark A. Hanes
Residential Single Family

Requests the Board of Appeals approve and grant an 8' variance to allow for a 45' front yard setback for a proposed principle structure and a 10' variance to allow for a 45' rear yard setback of a proposed principle structure at 9585 Hartwig Drive.

Appeal No. 3 is in variance to §229-52 (A)(1) and §229-52 (C).

DISCUSSION:

Ryan Mills recused himself from participating in the discussion and the vote for this appeal.

Neighbor notification forms are on file.

Mr. Hanes is present and submitted three (3) different scenarios, the documents are on file. The first scenario shows the measurements of the house at 937 square feet, which does not meet the Building Departments minimum square footage for a ranch style house which is 1350 square feet. The garage would be 484 square feet. Mr. Hanes spoke with Paul Gross of the Building Department who informed him that the two-story minimum is 1500 square feet and there must be 900 square foot minimum on the first floor. His concern with the two-story is that it doesn't fit the character of the neighborhood, he has discussed this with the neighbors and they agree.

The second scenario shows an 8' front yard variance, the house is lined up with all houses on the street. The square footage of the house in this scenario is 1329, plus a 484 square foot garage.

Ms. Greis said there are one and two car garages in the neighborhood.

The last scenario shows variances for the front and rear yards and would allow an 1819 square foot house, the rendering of the house shows a style that fits in with the character of the neighborhood better than the other two options.

Mr. Hanes said the existing house is between 1250-1300 square feet. The proposed house in the third option is on a footprint of 40' x 43' but would probably only be a 1300 square foot building; Mr. Hanes

drew his plans using the maximum size allowable. Chairman Michnik clarified that Mr. Hanes is looking to build an 1850 square foot building which includes the garage. Mr. Hanes said that is correct, he would like the ranch to be at 1500 or 1600 square feet. It is further clarified that the total footprint is 2100 square feet including the garage. Mr. Hanes said that is correct. He is a builder by trade and has been in business since 1980. He would build the house.

Mr. Callahan clarified that the old Zoning Law requirement was 25' minimum setback from the rear property line.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 3 as written.

ON THE QUESTION:

Mr. Hickey noted that Ms. Greis has lived in the neighborhood for over 40 years and has provided her comments. Mr. Hanes has extensive experience building homes and he is building this house to live in himself. The benefit far outweighs any detriment to the remaining health, safety and welfare of the neighbors. Based on the discussion it appears that this variance would not create any type of undesirable change in the neighborhood. There appears to me no other way for Mr. Hanes to do what he proposes other than granting the variance. Mr. Hickey said it is a substantial variance in light of what the present code is, but the manner in which the house is being proposed is not substantial, although the numbers are. This is a self-created hardship, but the other factors outweigh this criterion.

Gregory Thrun	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	David D'Amato	Nay
Ryan Mills	Recuse	Daniel Michnik	Aye

MOTION CARRIED.

Chairman Michnik reminded all members to make sure they are up to date with their Land Use Training hours as required by New York State.

Meeting adjourned at 8:02 p.m.

Carolyn Delgato
Senior Clerk Typist