

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday February 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  
David D'Amato  
Jonathan Hickey

Vice-Chairman Ryan Mills  
Patricia Burkard

Town Officials present:

Director of Community Development James Callahan  
Junior Planner Michael Hutchinson  
Deputy Town Attorney Steven Bengart  
Councilman Peter DiCostanzo

Other interested parties present:

Shelagh Thomas  
James Hultman  
Francis Curci  
Rich Cleland  
Maureen Nowak

Robert Denning  
Gene Sprecker  
Marsha Cleland  
Jason Toth  
Walter Hrynczak

**Old Business**

**Appeal No. 6**

Robert and Gayle Denning  
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a proposed attached garage that exceeds 40% of the total area of the principal structure. The proposed attached structure will be connected to the primary residence via a proposed covered walkway at 9069 Winding Creek Lane.

Appeal No. 6 is in variance to §229-55(D).

**DISCUSSION:**

Mr. Denning met with eight (8) of the neighbors and got them to sign additional paperwork in support of his proposal, those signatures are on file. Mr. Denning said he took the Board's feedback from the last meeting and incorporated it into this plan noting that it is an attached garage at this point.

Mr. Mills said the breezeway provides a nice transition between the existing structure and the new structure. There is still a concern with the size of the structure; Mr. Mills asked if the applicant can pare

down the size. Mr. Denning said this is what he is looking for in terms of the storage of the cars. The building materials will match the existing house. The revised size of the structure is 26'2" x 30'8".

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 6 under Old Business, as written.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

James Hultman  
Residential Single Family

Requests the Board of Appeals approve and grant a 3.5' variance to allow for a 6.5' side yard setback to a detached accessory structure (generator) at 4460 Patricia Drive.

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

**DISCUSSION:**

Mr. Hultman is present. Two (2) neighbor notification forms are on file. Mr. Hultman explained that he needs the variance because the generator needs to be 6' from his house and 10' from his neighbor's property line.

Mr. D'Amato asked who will install the generator. Mr. Hultman said the installer's name is Watt; he has installed a couple hundred generators, many of which were in Clarence. Mr. D'Amato asked if Mr. Hultman and the installer looked at the site together to see if this was the best location for the generator. Mr. Hultman said they both evaluated the property and agreed this is the best location as opposed to the back because it would disturb the appearance of the backyard. Mr. Hultman plans to plant decorative grasses around the generator so it cannot be seen from the road; he has no problem if this was made a condition of the approval.

Mrs. Burkard asked if the generator is noisy when it starts up and runs each week. Mr. Hultman said he stood next to his neighbor's generator when it turned on and it was not loud. He told his neighbor that if she was watching TV when his generator turns on, it would not disturb her watching the TV. The neighbor's master bedroom is on the other side of the house, not on the side where the generator will be.

Mr. Hultman has been at his address for 40 years, his neighbor just over 15 years. Mr. Hickey asked how tall the generator is. Mr. Hultman said it is 25' wide, 29" tall and about 48" long. It will be used for residential use only.

Mr. Mills asked if the applicant explored putting the generator in the back of the house. Mr. Hultman said they did but did not like the way it would have looked, the piping would have been visible and they would

have had to step over it. The air-conditioning unit is back there. The generator would be harder to camouflage if it was in the back of the house.

Mr. Michnik asked if the neighbor knows that the generator will make noise when it runs. Mr. Hultman said that issue never came up when he discussed the variance with the neighbor.

**ACTION:**

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal no. 1, as written with the condition that the applicant adds shrubbery around the generator.

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

MOTION CARRIED.

**Appeal No. 2**

Francis Curci  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a variance to allow for the placement of a detached accessory structure (generator) within the front yard space of a primary residence located on a corner lot at 8968 Connemara Lane. \*Note: Generator is currently installed at the property.

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

**DISCUSSION:**

Francis Curci is present and submits two (2) neighbor notification forms. Gene Sprecker, of Zenner & Ritter Heating & Cooling, said he installed the generator. He explained that there is not enough room on the south side of the house to install the generator as the property line is very close to the house. There is a pool in the backyard so there is no room for the generator in that area. The generator is currently located on the side of the house within a fenced-in area with bushes to hide it, this was the only logical place to install the generator. Mr. Curci pointed out that the generator is on the side of the house that is furthest away from the two neighbors.

Mrs. Burkard advised the applicant that he could have come for a variance to put the generator on the side of the house. This location is very obvious and not hidden at all. Mr. Curci said it is the least obtrusive to his neighbors, he said he could cover it up with some shrubbery. It is about 12' from the house.

Mr. Hickey asked if the applicant attempted to put the generator in another location. Mr. Sprecker said no. Mr. Hickey said if he is familiar with the code why did he not get involved with the appeal process prior to putting the generator in. Mr. Sprecker said there is a definite front to the house with a mailbox and when he installed the generator he thought he was putting it on the side of the house but with the house being on a corner lot he didn't realize it actually has two fronts.

Two (2) neighbor notification forms are on file.

Mr. D'Amato asked the applicant what the back-up plan is if the Board denies this request. Mr. Sprecker said the only other location would be in the backyard passed the pool and closer to the neighbor's house. Zenner and Ritter would probably incur the expense to move the generator.

In reply to Chairman Michnik's question, Mr. Curci once again agreed to put landscaping around the generator.

Mr. D'Amato asked who decided the location of the generator. It was clarified that both Mr. Curci and Mr. Sprecker discussed the best location.

Mrs. Burkard asked what the cost is to move the generator. Mr. Sprecker said approximately \$1,000. When asked to sign the neighbor notification form, the neighbor voiced a negative concern if the generator was to be on the side of the house so close to her property. That neighbor did not have a problem with the current location of the generator.

### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 2, as written, with the condition that landscape be provided on the north and east sides of the generator to shield it from view from the street. It is up to the applicant as to whether the landscaping is on the inside or outside of the fence.

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

MOTION CARRIED.

### **Appeal No. 3**

Marsha and Richard Cleland  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a variance to allow for the placement of a detached accessory structure (generator) within the front yard space of a primary residence located on a corner lot at 8205 Melissa Renee Court.

Appeal No. 3 is in variance to §229-55(D).

### **DISCUSSION:**

One neighbor notification form is on file.

Marsha and Richard Cleland are present. Mr. Cleland explained that he wants a generator because of the numerous power outages they experience. They have a finished basement he wants to protect along with protecting the value of the rest of his house. They have children and Mrs. Cleland has an elderly father that stays with them often.

Mr. Sprecker, with Zenner and Ritter, said the proposed location is on a corner lot and outside a fence, this is the closest spot to accommodate the utility lines, the air conditioning unit is out there as well.

There is not enough room on the side of the house that is closest to the neighbors plus there is a slab of concrete there.

Mr. Hickey asked how big the house is, Mrs. Cleland said it is approximately 3,300 square feet; they have lived there since 2002. The generator will be used for residential purposes only, for typical reasons. Mr. Sprecker said it is a 20 KW generator and is 2' wide by 4' long. The generator is placed on a 4' by 4' pressure treated frame. Mr. Cleland said he will add landscaping around the generator. The generator will come on once a week for 12 minutes as a self check.

Mr. Mills asked why the generator couldn't go inside the fence. The Cleland's do not have a problem with installing the generator inside the fence.

Chairman Michnik asked if the applicant is willing to landscape around the generator inside the fence. The Cleland's agree.

**ACTION:**

Motion by Ryan Mills, seconded by Jonathan Hickey, to **approve** Appeal No. 3, as written, with the following conditions:

1. The generator is to be located behind the existing white vinyl fence.
2. The applicant is to provide landscaping subject to their discretion.

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

MOTION CARRIED.

**Appeal No. 4**

Jason Toth  
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a 6' fence in overall height to be constructed in the front yard of the primary residence (west of home near northern property line) at 4265 Harris Hill Road.

Appeal No. 4 is in variance to §101-3(C).

**DISCUSSION:**

Jason Toth is present and explained that the church is fine with any fence that the applicant installs. He explained that he would like to create a visual barrier for the people who frequent the church next to his home. He has lived at this address for 4 years.

Two (2) neighbor notification forms are on file.

Mr. Hickey asked if Mr. Toth has noticed a change in the number of people who frequent the lot next to his home. Mr. Toth said in the winter it dwindles to 10-15 people that frequent that area, in the spring and summer months it gets a lot busier. The behavior of some of those groups of people is hard to deal with,

for example fist fights break out. Some groups that go to this church are dependency classes. There has been no vandalism to his house however, people have driven 3'-4' over the property line and parked on his lawn. He has found drug needles and other types of drug paraphernalia. He brought this to the pastor's attention. He would like a 6' high fence to block the behavior that he and his family witness on a constant basis. His wife and children feel uncomfortable in the front yard.

Mr. Mills' concern is the view of the people pulling out of the church. Mr. Toth provided photographs of the church's "entrance only" drive which is next to his property. The "exit only" is 150'-200' away from the "entrance only". He also has pictures of vehicles that are over 6' tall parked at the church. Mr. Mills suggested tapering the fence to 4' as it gets closer to the street; this may keep the view shed more open. Mr. Toth asked if the fog line is the edge of the road. Mr. Mills said the fog line is one demarcation of the roadway. Mr. Callahan noted that the fence cannot be put in the County right-of-way; the fog line is in that right-of-way. Mr. Toth said the County right-of-way ends a foot from the sidewalk. He does not plan to put the fence in the right-of-way. The length between the fog line and end of the fence would be approximately one car length; this will give anyone plenty of room to see oncoming traffic. Mr. Mills said from a safety perspective he would like to see the fence tapered, Mr. Toth agreed to that and asked for clarification on the point at which the fence should start to taper. The total span of the fence is approximately 70'.

Chairman Michnik said the applicant had a stake in the ground that was 14'6" from the fog line. The tree on the property is 20' from the fog line. Mr. Toth clarified that he is looking to start the fence at the stake; he wants the tree to be behind the fence. Mr. Toth plans on putting a fence around his entire property minus the southern side. It will be a wrought iron fence with pillars in between each section of wrought iron. The 6' fence would meet the last pillar of that fence on the northern portion of his property.

Mr. Mills asked how much of the fence encompasses the front yard space. Mr. Toth said it is about 70' from the corner of his garage to the end of his property. Mr. Mills suggested moving the fence back 20'. Mr. Toth thinks moving the fence back a car length and a half would be plenty of room. Mr. Toth said there are solid barriers blocking the view of the traffic now; having a fence there is not going to stop anybody from being able to see. Mr. Mills thinks the fence is going to impact the ability of cars coming down Harris Hill Road to see vehicles coming out of the church. Mr. Mills said the applicant knew there was a church next to the property when he purchased the house. Mr. Toth agreed but said he did not know there would be people who act the way they do there.

Mr. D'Amato agreed with Mr. Mills' concern. He does not think 2' of fencing is going to give Mr. Toth what he is looking for. Mr. D'Amato said Mr. Toth is looking for privacy from something that may be temporary or permanent; he does not know what the church's plans are. Mr. D'Amato said he is sure the entrance only area is used as an exit too. He suggested some natural things with trees, or calling on enforcement. Mr. D'Amato said a privacy fence is not going to cure Mr. Toth's problem. People will still bang on that fence, there will still be graffiti on the fence, there will still be damage to the fence. Mr. D'Amato said the applicant has several other options, he can take enforcement action against this facility on a regular basis and something will be done, they can't ignore that.

Mr. Toth said the fence would definitely put a visual barrier between him and the group. A 6' fence would stop them from staring at his family and intimidating them. He is putting up a 2' high cement wall and the fence on top of that with stainless steel, this information was included in the plans. This would definitely stop them from hitting and damaging his fence. Mr. Toth believes this fence is for security and privacy and feels it is very necessary.

Mrs. Burkard asked if Mr. Toth thought about when he pulls out of his driveway. Mr. Toth has, he mocked up a 2' by 5' section of fencing and put it in place. He had his wife pull out both backwards and forwards and there were no problems seeing any vehicles. Mrs. Burkard asked about snowplowing and the snow banks it will create. Mr. Toth said he has been through heavy winters and there have not been any problems. The church pushes their snow on the other side of their property making piles that can exceed 12' in height. There are two (2) nights a week that Mr. Toth is aware of in which chemical dependency meetings are held. Mr. Toth has offered to pay the church to stop these classes, but they won't as it is part of their ministry. So this is his next step.

Mr. Michnik asked if the applicant is willing to start the fence at the tree that is in the front yard. He agreed with Mr. Mills' and Mr. D'Amato's concerns. Mr. Toth is asking for a significant variance. If this is approved, Mr. Michnik would want to see the fence start at the tree. Mr. Toth said people will still cut through his property, creating a liability issue.

Mr. Toth would agree to a 4' fence for the first 20', but he would rather not. He would be more comfortable with it being higher farther down the fence line.

Deputy Town Attorney Steve Bengart said Harris Hill Road's right-of-way is 66'. The fence cannot be put in the right-of-way. The right-of-way can and might extend into Mr. Toth's property. Mr. Toth was unaware of this.

**ACTION:**

Motion by Jonathan Hickey to **approve** Appeal No. 4 as amended as follows:

- The final 20' of the proposed fence are to be at 4' in height, as the fence moves east down the property line it will be increased to 6' in height. Any violation of the right-of-way or legal encroachment would nullify the appeal. No part of the fence can be in the County right-of-way.

After further discussion it is noted that the right-of-way line is unclear.

Mr. Hickey withdrew his motion.

Mr. Toth requested the Board table his request until next month's meeting.

**ACTION:**

Motion by David D'Amato, seconded by Ryan Mills, to **table** Appeal No. 4 to allow the applicant time to obtain clarification on the right-of-way measurement.

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

MOTION CARRIED.

Motion by Patricia Burkard, seconded by Ryan Mills, to **approve** the minutes of the meeting held on January 8, 2013, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:13 p.m.

Carolyn Delgato  
Senior Clerk Typist