

Town of Clarence
 One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
 Tuesday April 12, 2016
 7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:02 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D’Amato	Patricia Burkard
Gregory Thrun	Richard McNamara

Town Officials present:

Director of Community Development James Callahan
 Deputy Town Attorney Steven Bengart
 Councilman Paul Shear

Motion by David D’Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on March 8, 2016, as written.

Richard McNamara	Aye	Gregory Thrun	Abstain
Patricia Burkard	Abstain	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED.

The Zoning Board of Appeals Committee entered into Attorney/Client Privilege session at 7:03 p.m. The Attorney/Client Privilege session ended and the Zoning Board of Appeals meeting opened.

Other interested parties present:

Bradley Rehwaldt	David Simons	Peter Sorgi
Rich Thering	Mary Mallon	Frank Komorowski
Ken Rusin	Barb Rusin	

New Business

Appeal No. 1

Bradley Rehwaldt
 Residential Single Family

Requests the Board of Appeals approve and grant an 8” variance to allow for a 48” foundation wall from center of road to center of lot at 4595 Thompson Road.

Appeal No. 1 is in variance to §229-23.

DISCUSSION:

One (1) neighbor notification form is on file, three (3) others were sent certified mail.

Mr. Rehwaldt is present and explained it is a single family house. Test digging has been done for the rock, they did the elevations and they were going to be about 6" above the maximum of 40". He spoke with Paul Gross of the Building Department who recommended he apply for a variance for the extra height.

Mr. Thrun asked if the bedrock is inhibiting the applicant from digging down as deep as he would like for the foundation. Mr. Rehwaldt said yes, and went on to say that they discussed chipping into it but Mr. Gross suggested against this. Mr. Thrun asked if the siding will be brought down at the section of the house where there is extra foundation, so it will look comparable to the rest of the house. Mr. Rehwaldt said the foundation will be 18" out of the ground like a normal glass block window.

Mrs. Burkard asked if this will have any effect on the neighbor's drainage. Mr. Rehwaldt said no, they had a drainage study done for the swales, etc. Mr. Rehwaldt is the builder, he has a purchase offer on the lot. The purchase is contingent on the variance because the potential owners do not want the lot if they can't put in a basement. The potential owners will buy the lot from Mr. Rehwaldt. Mr. Rehwaldt said there will be no daylight or walkout features, however there will be an egress window in the basement. Mr. Mills asked if the applicant would blast deeper if this variance was denied. Mr. Rehwaldt said no, the buyers do not want the lot if they can't get the variance.

Chairman Michnik asked how far the basement foundation will extend from the finished grade. Mr. Rehwaldt said 18". Chairman Michnik asked if he will build up. Mr. Rehwaldt said it is already built up, fill has already been brought in by Mr. Visone. Chairman Michnik voiced his concern about the house sticking out, he referred to another house where there was a 6'-7' grade difference from the neighbor's property. Mr. Rehwaldt said the house will not stick out. Chairman Michnik asked if the applicant has made arrangements to have the water taken away from the house, but not drain onto the neighbor's property. The drainage study has been done by Mr. Schutt; there is a ditch to the right of the proposed house and to the left (north) there is a swale. Mr. Rehwaldt submitted a large copy of the drainage study which shows the direction of the water flow at the site. Chairman Michnik voiced his concern regarding water flow onto the neighbor's property, he suggested making the swale deeper. Mr. Callahan noted that the building plans will have to go through the Building and Engineering Departments for approval of the plans, including drainage, before they can build.

Mr. Rehwaldt said he would not purchase the lot and build the house if the variance is not granted.

Chairman Michnik asked if the basement is going to be oversized due to the variance request. Mr. Rehwaldt said it is a 7' basement, there will be a 6.8' clearance under the beam, this meets code.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written with the condition that drainage be approved by the Building and Engineering Department.

ON THE QUESTION:

Mr. Thrun said the reason for this approval, in part, is that this is not a condition that was made by the client, they are trying to accommodate by changing the walls to 7' rather than deeper to try and mitigate the situation that they are in.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

Dunn Tire LLC
Commercial

Requests the Board of Appeals approve and grant a 10' variance to allow for a 70' front yard setback for the proposed addition to an existing commercial structure located at 6585 Transit Road.

Appeal No. 2 is in variance to §229-87(C)(1).

DISCUSSION:

Three (3) neighbor notification forms have been sent, however there are no signed forms on file. One (1) neighbor is present at the meeting.

Peter Sorgi, attorney for Dunn Tire, is present along with David Simons, Executive Vice President and Chief Financial Officer of Dunn Tire. Mr. Sorgi explained the property will be redeveloped. He referred to AS-101, the site plan, and said the project was approved by the Planning Board and the applicant is hoping the Town Board will set a Public Hearing for the Special Use Permit required for automotive use at its meeting tomorrow. Mr. Sorgi referred to the existing building and said they want to put the retail in the front, they are also planning a new six-bay addition. It will be an improvement to the area. The overriding standard for a variance is the benefit to the applicant is weighed against the detriment of the health, safety and welfare of the surrounding community. The benefit is that a new store will open up. The applicant does not see a detriment to the community by redeveloping a dilapidated building. He referred to the five criteria that the Board looks at when reviewing a request. They do not think an undesirable change will be produced by this because they are redeveloping the building with a better architectural style for a new business. They will also add landscaping. They do not have another feasible method to achieve the request, another method would have them move back but that would use more greenspace. They have to work with the existing building, it is a good building but not for the retail, that will go in the front. The hardship is not self-created because this is the property that exists. They do not see any environmental factors; the project has received a Negative Declaration pursuant to the State Environmental Quality Review Act by the Planning Board.

Mr. Mills asked what other designs the applicant explored. Mr. Sorgi said he looked at moving everything to the back but the existing building does not work well with retail. There would have to be a lot of work done to the building and then build on to the back which would take up greenspace in the back. This option is cost prohibitive. Mr. Sorgi said there are few other businesses in the area that have a 70' setback from Transit Road. Mr. Mills asked if the retail area could be smaller. Mr. Simons said the proposed addition is not a lot of space as it has to house the waiting room and sales people.

Chairman Michnik suggested moving the entire set-up back and using the existing building. He thinks it is in the applicant's best interest to use the existing building as the starting point and work back, adding onto the back side. Mr. Sorgi said there is a 75' buffer. He noted again that it would be very costly to make that building accommodate the retail end of the business. Chairman Michnik is concerned about how the building is going to sit with the neighbors. He asked if the dumpster and loading area could be moved to the north side of the lot. Mr. Sorgi said he is willing to listen to any neighbor concerns regarding this but noted that this is the plan that was approved by the Planning Board. Chairman Michnik said he thinks the applicant can build onto the back of the building and still create everything they want to do and still be a good neighbor, there is plenty of land back there. Mr. Simons said the existing space is a solid building but is best used for storage, there are two shorter rooms along the side of the building that are not useful. If the sales floor was moved into that area the stock room would become much smaller and another entire building would have to be built to accommodate stock.

Mr. Sorgi said this company has a long history of being good neighbors in Western New York. They have also worked with the neighbors to establish the 75' buffer area. If he was a neighbor he would be happy that someone is transforming it. Chairman Michnik said the 75' buffer helps the neighbor in the back, there is still 350' to use for that building. His concern is the 20' of blocking off the view of the neighbors next door. Mr. Sorgi asked if Chairman Michnik had concerns with any of the other four (4) criteria he referenced. Chairman Michnik said no, this is his main concern.

Mr. Thrun asked about demolishing the existing building, noting that it is probably not feasible to do so. Mr. Simons said it is a solid building and will be useful for storage. Mr. Thrun wondered how much the cost will be to remove or change foundational structures or steel beams in the existing building when they put the addition on. Mr. Simons said the inside is cinder block. Mr. Thrun said he can cut into the cinder block any way they want and still maintain the integrity of the building. Mr. Thrun said their biggest expense would be to move the bathrooms to another location. He understands Chairman Michnik's concerns. Mr. Thrun has no comments on the other four (4) factors.

Dunn Tire owns the property. Mr. D'Amato asked what the applicant would do if the request is denied. Mr. Simons said they would need to re-develop the thought. They are trying to accomplish a much better looking building with the brick on the front and Dryvit on the top, there is only so much that can be done to the existing building. The applicant has explored other design options and this is the most feasible.

Richard Thering, of 6575 Transit Road, lives next to the property in question. His first concern was it was coming so far out in front of the building but after a lot of thought having a good solid neighbor who wants to be neighborly he would have no real objection to the plan. Mr. Thering said the Planning Board was very concerned with vegetation. Behind his building along the glass greenhouse are a bunch of Ash trees that are in bad shape, he would love to see these trees removed before they fall on his building.

Mr. Callahan noted that in terms of process the Planning Board looked at the site plan. The Town Board needs to approve the automotive use and at that point the Ash trees can be addressed.

Mr. Mills asked if the applicant can provide evidence of other structures in the area that have a similar front yard setback to what is being proposed. Mr. Sorgi said all the buildings have a similar setback with a 15'-20' difference of what he is asking for, but going south there are two or three structures that come out as far as what he is asking for.

Chairman Michnik asked what the applicant would do if the Board denied the variance, would they re-work the plans or would they walk away from the project. Mr. Sorgi said the applicant would need to look at those options; they were optimistic so they have not discussed what they would do in the case of a denial. Mr. Simons said part of the consideration would be if they could be open for this upcoming season. Mr. Sorgi noted that the Town has put emphasis on infill development and redevelopment and supporting local businesses, when all information is weighed a favorable vote can be made because of this and because of the evidence in the public hearing.

Chairman Michnik asked if the Planning Board approved the dumpster and the trailer in the back. Mr. Callahan said the Planning Board has approved the site plan, the applicant is required to have a buffer in the back and to add some additional trees to the landscaping. Chairman Michnik asked how long the trailer stays there before it has to be moved. Mr. Simons said until it is full, which is about three (3) weeks.

Mr. Mills referred to the elevation plan and said it looks like a brick building, he asked for confirmation that it is not stamped brick. Mr. Simons said it is actual brick at the bottom, Dryvit at the top.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 2 as written.

ON THE QUESTION:

Mr. Thrun said based on Dunn Tire and their attorneys they are re-developing an older property that has some substantial age to it. It will refurbish it, it will improve the neighborhood. Looking southward, there is a Citizens Bank and other buildings that are closer to the road. This would be more in line, other than the Thering's house. They are rehabilitating an old building and adding to the improvement of the area and that it be in line with some of the other houses that go south on Transit, this is Mr. Thrun's reason for approving this motion.

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

MOTION CARRIED.

Appeal No. 3

Mary Mallon and Frank Komorowski
Residential Single Family

Requests the Board of Appeals approve and grant a 760 square foot variance to allow for a 960 square foot detached secondary garage located at 8730 Greiner Road.

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

DISCUSSION:

There are two (2) neighbor notification forms on file.

Mary Mallon and Frank Komorowski are present. Ms. Mallon noted that the home is a two-family home. Her mother lives in the apartment. They are looking to build a two-car garage because there is not adequate parking, nor is there adequate storage if someone else were to live there. The only entrance to the basement

is in the middle of Ms. Mallon's and Mr. Komorowski's unit. So they tried to make the secondary garage large enough to accommodate two (2) cars and some storage for a future renter.

Mrs. Burkard voiced her concern regarding how the structure will look. She asked if it will be siding versus brick. Mr. Komorowski said it will have a brick front, siding on the side. There will be one (1) door on the structure. Ms. Mallon said it would be difficult to match the brick of the house, the house was built around 1978. They thought they would match the structure with white siding, they plan to landscape around the front of the structure to minimize the view from the road. It is confirmed that it will be even with the other garage. It would be difficult to put the structure anywhere else on the property because the land is so hilly. The apartment upstairs is approximately 1,000', it is above the garage. Mrs. Burkard asked if the applicant thought of attaching the garage. Ms. Mallon said she doesn't even know how they would do that. Mr. Komorowski said they felt an attached garage would not be as pleasing, they did not see any advantage to it. The land slopes down next to the house so to attach a garage would be extremely difficult. The floor of the garage will be approximately three feet lower than the level of the floor of the garage on the house. They will fill in the property between the house garage and the proposed garage and there will be a walk installed. He will have to put about 50' of driveway in leading to the proposed garage, he does not want to make it a steep driveway, they tried to make it as accessible and as easy as possible for any future tenants. The new driveway will be lower than the existing driveway. Mr. Komorowski said the garage walls will be 12' high from the concrete pad.

Mr. Mills asked if the applicant could achieve the objective he desires with less size. This is a large variance. Mr. Mills suggested a 24' x 30' structure. Ms. Mallon said they would do that if they had to. There is a shed on the parcel for the lawn and garden equipment, it will either be moved to a different location on the parcel or it will be removed completely.

Chairman Michnik voiced his concern with the size of the proposed structure. He pointed out that the pool was removed and filled in. He wants a definite answer on if the shed is being totally removed or not. He has a problem with detached garages, they end up looking like they were just placed there and they don't fit in. He is sure the applicant can do more to enhance the frontal view of the structure. The applicant has owned the property for one (1) year. Chairman Michnik asked if the applicant had these same concerns for their tenants when they bought the property. Ms. Mallon said no because the plan was for her mother to live there, which she is. But there may come a point where she cannot live on her own, so they are trying to pre-plan. Her mother no longer drives. They will rent out the apartment once her mother no longer lives there. Chairman Michnik asked if the applicant looked into the option of having another set of stairs put in so the tenant would not have to go through Ms. Mallon's house to access the basement, or splitting the basement somehow. Ms. Mallon said there is no way to do that because the apartment is on the second floor. They looked at several other options, they have been looking at this for a long time. Chairman Michnik said his concerns include the size of the proposed structure and the appearance of the building. Ms. Mallon said she has no intention of putting up something that doesn't look good because she lives there and plans on living there for a long time. Chairman Michnik said he is not only looking at how this request will impact the neighborhood now but how it will impact the neighborhood 15-20 years down the road. If the applicants install landscaping, then sell the house, the new owners may rip out the landscaping. He would like to see the front changed so it looks a little dressier, with some type of brick. The applicants said they can do that.

Mr. Komorowski noted that the Town owns the property to the east, it is where the ditch is that goes to Tonawanda Creek. He knows nothing will ever be built there unless the Town changes something.

Mr. Thrun said if the apartment is rented out will there be a wall in the structure to separate their storage from their vehicle. Mr. Komorowski said he was planning to build a wall in the future. The 40' length brings the structure even with the back of their house.

Mrs. Burkard asked if there is a basement under the entire house. Mr. Komorowski said no, not under the garage, and the basement that is there is not usable. It is a 6' high basement and there is a forced hot air unit down there, a portion of the basement is more the size of a crawl space. Mrs. Burkard does not understand the financial end of this request. The applicant is offering a garage that is almost the size of the apartment, is that really necessary? Ms. Mallon said the tenant may have two cars, they are determined to do this right.

Mr. D'Amato asked if the tenants will have access to laundry and where that would be. Ms. Mallon said the large bathroom in the apartment has room for laundry equipment or there is a hall closet that could easily be converted using stackables. Mr. D'Amato said there is the concern of more space than not having a utility like that, he thinks this should be addressed before the size of the garage. He feels 24' x 30' would be sufficient for what the applicant is trying to accomplish.

Mr. Mills asked if the applicant can provide evidence of any nearby structures that are this large in size. Mr. Komorowski has not seen any. The house next to them has a big dilapidated barn on it, they are not looking for something like that and they do not have an issue with that barn being there.

Chairman Michnik said he feels the same as Mr. Mills does about the size of the structure. He asked how the applicant will control the tenants parking in the garage all the time. Mr. Komorowski said even if they don't, they can park in that section of the driveway. Chairman Michnik said if they go smaller they will still end up with 8' x 24' storage. Ms. Mallon said if that is what the Board prefers that is what they will do, but they (the applicant's) would prefer the 24' x 40'. They want to be cooperative. The height would be 16'.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 3 with the following language:
 "A 520 square foot variance be allowed for a 720 square foot detached secondary garage located at 8730 Greiner Road."

With the additional conditions that:

- At least 25% of the facade be either brick or stone.
- The existing shed stay on the property but is moved closer to the house.

ON THE QUESTION:

After further discussion, Chairman Michnik suggested adding the condition that the existing shed would be moved closer to the house on the east side of the property. Mr. Mills agreed to add this to the motion.

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

MOTION CARRIED.

Appeal No. 4

Kenneth and Barbara Rusin
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 2.5' variance to allow a 7.5' side yard setback for the placement of an emergency generator at 8125 Leah Court.

Appeal No. 4 is in variance to §229-55(E)(1).

Deputy Town Attorney left the meeting due to conflict of interest. The applicant's for Appeal No. 4 are his neighbors.

DISCUSSION:

Kenneth and Barbara Rusin are present. Mr. Rusin said they want to put an emergency generator in and thought they had more property on the side of the house than they actually have. He only has about 11.5' between the house and the property line.

Mr. Thrun asked the applicant if they have any plan for a fence or an enclosure around the pad for the generator. Mr. Rusin said there are no plans like that, there will be a stone base and a concrete pad. Currently there is a pool filter and an air conditioning unit on that side. This is where the gas and electric lines are. There is no room in the backyard for the generator because there is a pool and a patio there.

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

Chairman Michnik asked about landscaping and said it will muffle some of the noise for the neighbor. Mr. Rusin said the generator needs a 3' open air space in order to be cooled as it is running. Aesthetically, he does not see how it will look good, plus it would be on the property line at that point. The plan showed the pad right up against the house. Mr. Mills suggested landscaping just along the front of the generator, parallel to the front of the house. Mr. Rusin said at the front of the house there is a retaining wall that comes out about 2.5' and it has landscaping which includes a couple Burning Bushes and a Pear Tree. If you look at the house from the front, the wall and landscaping will hide the generator. If you come in off of Golden Oak Circle you will see the generator just as you can see their neighbor's air conditioning units. Chairman Michnik said they are trying to lessen the view of it, so he is suggesting some type of greenery be installed. Mr. Rusin said he will look into it, he is willing to do it but he wants something that is going to look good.

ACTION:

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** Appeal No. 4, as written

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

MOTION CARRIED.

Meeting adjourned 8:22 p.m.

Carolyn Delgato
Senior Clerk Typist