

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday April 8, 2014  
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
Gregory Thrun	Richard McNamara

Town Officials present:

Director of Community Development James Callahan  
Junior Planner Jonathan Bleuer  
Deputy Town Attorney Steven Bengart  
Supervisor David Hartzell

Other interested parties present:

Mr. and Mrs. Jack Davis	Michael Metzger
Michael Wolter	Jeffrey Beyer
Judith Beyer	James Bielmeier
Trey McDermid	Sumnesh Mathur
Sushma Mathur	Barak Ulin

Motion by David D'Amato, seconded by Gregory Thrun, to **approve** the minutes of the meeting held on March 11, 2014, as written.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

Jack Davis  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) An 89' variance to allow for the creation of a new building lot with 36' of frontage.
- 2.) A 3' variance to allow for a 2' side yard setback of an accessory structure.

Both requests apply to 9290 Hunt Club Lane.

Appeal No. 1 is in variance to §229-50(A) and §229-55(E)(1).

Chairman Michnik recused himself from any discussion and the vote on this agenda item and left the meeting room; he has filed the appropriate paperwork with the Town Clerk's office. Vice-Chairman Mills will preside over the meeting.

## **DISCUSSION:**

Michael Metzger of Metzger Civil Engineers is representing the applicant. He noted that the property has two ponds on it and Gott Creek runs across the property as well. The house is adjacent to the cul-de-sac. The property is 11.2 acres in size and the Davis' have lived on the property since 1984. Their children have grown and moved out of the house, so they are looking to downsize. They want to build a new home but do not want to leave their property. The applicant would like to subdivide the property and sell their existing home along with a piece of property, then build their new home on the balance of the site. He referred to the red lines on the site plan and said they are the existing and proposed property lines. The red lines surrounding the home would be the proposed new lot. There would be two (2) lots if this variance was granted and they would have to go to the Planning Board for Minor Subdivision approval. The existing house would remain on a parcel that is just over 2.4 acres in size, the Davis' would retain the balance of the property; the site plan shows the location of the proposed house. The property is just short of 196' in width, in the Residential Single Family zone the minimum lot width is 125', obviously there isn't enough frontage for two (2) lots at 125'. The applicant is asking to leave 160' with the 2.4 acre parcel, this would have the existing home on it, and parcel off 36' at the frontage which would be the driveway for the 8.7 acre parcel. The 36' dimension comes from the Town's Open Development regulations: an Open Development can be created with a 36' wide piece of property being the driveway that will lead back to parcel at the back of the property. The 36' measurement was decided on by the Town because it is adequate to support a driveway and utilities to go to the back of the property. The existing house and property will be sold off. The parcels in the existing neighborhood adjoining the property range in size from 2/3's of an acre to 2.3 acres. So the smallest parcel of the proposed split would still be larger than any adjoining parcels. It is consistent with the character of the neighborhood and would not have an impact.

Mr. Metzger said the second variance is for an accessory structure. He referred to the site plan and noted the pool house. As the pool house exists, it is 38' from the property line, this is where the proposed 36' driveway would go to get to the back of the property which leaves the pool house at a 2' setback from what would become a new property line. The minimum setback for an accessory structure is 5', so they are asking for a 3' variance.

Mr. Metzger said it has always been the intent of the Davis' to have one more lot for them to build their new home on. One avenue they were following was an Open Development Area through the Planning Board, which could have resulted in four (4) lots. The applicant discussed the 4-lot Open Development Area with the Planning Board Executive Committee but decided against it, they wanted to focus on a lot for themselves. They have a Concept Approval from the Planning Board to advance a 2-lot Open Development in the same configuration as what is being submitted at this meeting. The Planning Board felt it was a reasonable project so they said move forward, the next step would have been the preparation of detailed engineering drawings, which would be quite an expense. Mr. Metzger is trying to save the Davis' from that expense. He understands that the Open Development process and the engineering plans are there for a reason; it provides protection for the Town, the neighborhoods and to make sure things are done properly and no issues created. An engineering drawing would be definitely be needed if this was a 4-lot Open Development, but this is only for two (2) lots and the only construction will be to build one (1) house. A building permit still needs to be obtained for the new house, and through that, the Building Department will review a grading and drainage plan.

Mrs. Burkard asked if there are any issues with the power line that runs across the property, Mr. Metzger said no that is not a problem.

Fourteen (14) neighbor notification forms are on file and there are no objections to the request. There are 16 properties that abut the Davis' property, they were able to contact 14 of the 16 neighbors. The two (2) that were unreachable were 9305 Hunt Club Lane and 9285 Hunt Club Lane. Those two parcels are at the far end of the property.

Mr. Thrun asked what type of base the pool house has. Mr. Davis said it is on a foundation so it couldn't be easily relocated. Mr. Thrun asked how far the pool has to be from the property line. Mr. Callahan said 10' is the required setback for the pool from the property line. Mr. Davis confirmed that the pool is more than 10' from the property line.

It is confirmed that the driveway will be asphalt. Mr. Thrun asked if there will be any trees or landscaping lined along the driveway for the privacy of those people who will live there. Mr. and Mrs. Davis want to work on the landscaping in that area, especially with the neighbor, Mr. Wolter, because his house is about 60' from the property line. Mr. Davis and Mr. Wolter have discussed relocating the driveway. Mr. Metzger referred to an updated site plan known as Exhibit A that showed the lot 50' wide instead of 36' wide which pushes the driveway 14' further away from Mr. Wolter's property than what was originally proposed. The Davis' have already agreed that they would put landscaping in to help buffer the driveway from Mr. Wolter's property. Mr. Wolter said there is an existing service driveway in that area, so it makes sense to put the driveway there anyway. Mr. Metzger asked if it would be possible to amend the request this evening from a 36' wide parcel to a 50' wide parcel.

Mr. Wolter, of 9200 Hunt Club Lane, said the neighborhood is very residential with a lot of trees; it is very wooded. He has 2.7 acres and it is all land-locked and he wants to keep it like that as much as possible. The 36' would not work, it would be too close, but at 50' it keeps it in line with the service area and makes sense. Adding the landscape buffer helps, too.

Mr. McNamara asked how the frontage of the existing house is impacted by changing the variance request from 36' to 50'. Mr. Metzger said it changes by 14', so it goes from approximately 160' to approximately 146'. In the Residential Single Family zone the minimum lot size is one (1) acre, this lot would be just under 2.4 acres.

Mr. D'Amato asked what the size of the proposed house is. Mr. Davis said the house will be a single story ranch-type home and will be between 2500 and 3000 square feet. Mr. D'Amato asked if the applicant looked at any other feasible spots on the property to locate the house. Mr. Metzger said the proposed spot is not the only feasible spot but it is the best spot.

Mr. Mills asked for more details on the proposed house. Mr. Davis said there will be four (4) or five (5) garage bays. The front of the house will face the road and he will be able to see the ponds out the back of the house. Mr. Metzger said they will not need a variance for the house; it will comply with the requirements. Mr. Mills asked for an estimated cost difference if the applicant did an Open Development Area as opposed to a variance request. Mr. Metzger said the cost difference would be about \$20,000. Deputy Town Attorney Steve Bengart said there are ponds and wetlands on the property so the 4-lot Open Development is not likely an option, and after discussion with the Planning Board it was not going to happen. Mr. Davis confirmed that his plan is for only one (1) structure on the back property.

In response to Mr. D'Amato's question as to why the Davis' want to move from their existing house, Mr. Davis said it is 6100 square feet, 6 bedrooms, five and a half baths, it is too big for him and his wife.

Mrs. Burkard asked if the Davis' will build their new home before selling their current home. Mr. Davis said yes. Mrs. Burkard said this way the new owners will know what their surroundings will look like.

Mr. Wolter said he is comfortable with a condition stating there will be a landscape buffer provided between his property and Mr. Davis' property.

### **ACTION:**

Motion by Gregory Thrun, seconded by Ryan Mills, to **approve** the variance as accepted and outlined in Exhibit A with the 50' frontage and the 15' easement of the driveway and incorporate a landscape buffer to be determined between Mr. Wolter and Mr. Davis. Exhibit A is on file.

### **ON THE QUESTION:**

It is clarified that the variance being requested has been changed to 75' as opposed to 89'. The 3' variance remains the same.

Deputy Town Attorney asked Mr. Wolter if the lack of details in the landscape buffer conditions is acceptable to him. Mr. Wolter said as long as the buffer is in the motion to some extent, which it is, he and Mr. Davis will work it out.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye		

### **MOTION CARRIED.**

Chairman Michnik returned to the meeting.

### **Appeal No. 2**

Jeffrey and Judith Beyer  
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow for the construction of a 644 square foot second garage (detached accessory structure) at 4120 Thornwood Lane.

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

### **DISCUSSION:**

Jeffrey and Judith Beyer are present; they submit seven (7) neighbor notification forms. The forms are placed in the file. There is one adjacent neighbor that Mr. Beyer was unable to contact because he is out of Town and will return this evening. Mr. Beyer said he could probably have that notification form tomorrow; he doesn't anticipate that neighbor would object to the variance request.

Deputy Town Attorney Steve Bengart said if they vote tonight they can take into consideration the fact that they didn't here from the neighbor. Mr. Beyer can ask to have it tabled instead of having it go forward. If Mr. Beyer is comfortable they can move forward. Mr. Beyer said he wants to move forward.

Mr. Beyer said he and his wife would like more garage space. There are four (4) vehicles in the family and they need to store pool and yard equipment. He submitted a rough sketch drawn by Jim Bielmeier, the builder, of what he wants to do. The drawing is placed in the file and labeled Exhibit A. Mr. Beyer said they are trying to make the garage match the house. The garage would have a red brick front, vinyl on the sides, window on each side and a door on one side. They want the roofline similar to the front of the house. They want it to look like it has always been there.

Mr. Mills asked if the applicant explored attaching the structure to the residence. Mr. Beyer said they were talking about a breezeway; they have not explored physically attaching it to the house. There is an established walkway and a gate and a pool in the back. He doesn't see how this structure could be attached without upsetting the other things that are already in place in the back yard. The breezeway would connect from the new garage to the existing house. Mr. Beyer submits a black and white copy of a photo showing a brick façade two-car garage with an attached breezeway to a structure, labeled Exhibit B and place in the file. Exhibit C shows photos of other homes in Clarence that have a breezeway connection from a garage to the principle structure. Mr. Beyer said if a breezeway is possible he would like to do it.

Mr. D'Amato asked how long the Beyer's have lived at this address. Mr. Beyer said they have lived there since October 2005. Mr. D'Amato said he drove around the neighborhood and there is no one else who has what Mr. Beyer is asking for. Mr. D'Amato said he is concerned with creating a ripple effect and changing the look of the neighborhood. He asked the builder if there is an option to attach the garage. Mr. Bielmeier said there is a sidewalk and shrubbery behind the house that would be cut off if the structure was attached. Mr. D'Amato said sidewalks can be removed. It is noted that there is a fireplace outlet on the other side of the house. Mr. Bielmeier said there is another house in the neighborhood that has an attached garage, it is on Clardon and was approved about six (6) years ago. There is an aerial of this house on file labeled Exhibit D.

Mrs. Burkard said she agrees with Mr. D'Amato and is very concerned about it being single; it doesn't blend together. As far as resale goes, she thinks the applicant would want it to look as good as it can. She is not comfortable with the fact that she does not know exactly what it will look like. Mrs. Beyer asked what Mrs. Burkard preferred. Mrs. Burkard said she thinks a fully attached garage looks best but she has seen decent breezeway connections. The fireplace is a gas fireplace with a gas outlet and could be moved, therefore, the garage could be attached. Mr. Beyer said Exhibit B is what his garage would look like. Mrs. Burkard said she would be more comfortable if there was a drawing of exactly what it would look like.

Mr. Thrun asked if the existing shed will be removed. Mr. Beyer said yes. Mr. Thrun said this would be something that is out of the norm for most of the houses in the neighborhood. Without a clear drawing of the plan, Mr. Thrun is not comfortable making a decision.

Chairman Michnik is also concerned because there are not plans. He noted that there is not another stand-alone garage in the neighborhood like the one that is being proposed.

Deputy Town Attorney Steve Bengart asked Mr. Callahan if the applicant would have to get a variance if the garage was attached. Mr. Callahan said it depends on the size; 960' is the maximum size. Deputy Town Attorney Steve Bengart explained to the applicant that if it were no longer a detached structure this variance

would not be required. If the size of the structure was kept under 960' the applicant would not have to come back to the Zoning Board of Appeals. One option for the applicant is to ask the Board to table the request tonight and come back with additional information. This would give the applicant time to decide whether he even needs to come back to the Board. If the Board moved ahead tonight and voted it down, the applicant would have to come in with something different. It is clarified that "attached" means attached with a breezeway or attached directly to the structure. It is further clarified that the proposed attached garage, combined with the existing garage cannot exceed 960' without a variance.

Mr. and Mrs. Beyer asked the Board to table the request to provide them the opportunity to make further decisions and obtain drawings on the request.

**ACTION:**

Motion by David D'Amato, seconded by Patricia Burkard, to **table** Appeal No. 2 to allow the applicant time to obtain the information requested per the discussion.

**ON THE QUESTION:**

If the applicant comes back to the Board the neighbor notification form for the adjacent neighbor, who was out of Town, needs to be submitted. Prints of the proposed structure are to be submitted as well.

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

**MOTION CARRIED.**

Supervisor David Hartzell said he thinks there is nothing more important to Clarence than what Jim Callahan, Jonathan Bleuer, the Zoning Board of Appeals and the Planning Board do. On behalf of the Town of Clarence he thanked them for their work.

**Appeal No. 3**

Natale Builders  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 3' variance to allow for a 7' side yard setback of a proposed principle structure at 6802 Rivera Way, lot #3.

Appeal No. 3 is in variance to §229-63(A).

**DISCUSSION:**

Trey McDermid of Natale Builders is present and submitted revised drawings. He explained that the request has changed to a 2' variance because the size of the house was originally miss-drawn by the architect.

Mr. McDermid submitted certified receipts confirming that he sent neighbor notifications to the neighbors on either side of the property in question.

Sumnesh and Sushma Mathur are present. Mr. Mathur said the two bedrooms on the south side of the house are 11' by 11', they are requesting an additional 2' on those two bedrooms.

Mr. McDermid said they are trying to maintain as close to the 20' space between the homes as possible in the subdivision.

Mr. D'Amato asked if the Mathur's purchased the property yet. Mr. McDermid said not yet, Natale Builders still owns the property. Mr. D'Amato said this is the third request that has come before the Board from that development with issues. Mr. McDermid was not aware of the other two requests. Mr. D'Amato sees this as a problem the builders are creating. The builders are asking the Zoning Board members to give the relief for what they created. He said the builder needs to look at this and design it so it fits in with what they have available there on the property. Mr. McDermid said the standardized house does fit, this was a request from the client. Mr. D'Amato said the applicant should have been made aware of what size house fits within that dimension.

Mrs. Burkard asked what size the lots are in the development. Mr. McDermid said they are 70' by 113'. There is a limit on the maximum size of the houses in the development, there are two-story and ranches available. Mrs. Burkard asked if the applicant looked at any other way to make the bedrooms larger. Mr. McDermid said this is the style home the potential buyers selected.

Mr. Thrun agreed with Mr. D'Amato. He asked if there is room in the back of the property to extend the bedrooms. Mr. McDermid said this lot falls off in the back, it is a daylight scenario. There is also a summer lounge area on the back of the house.

Mr. Mills asked if there are other lots available. This is one of the last lots left with this width. Mr. Mills asked if the applicant looked at other options. Mr. McDermid said they looked at other ways but it came down to a matter of what the client wanted to achieve in this design. Mr. Mills said it seems that the west side at the sunroom could be extended a couple feet, however this would increase the square footage but not the width and the clients are looking to make the rooms wider.

Chairman Michnik said he would like to see the design re-worked as well.

Barak Ulin, of 6796 Rivera Way, said he was told the property would be staked and it was not. He and his wife want to know how it will impact their family. He has no problem with neighbors but wants to know the full extent of how it is going to look.

Mr. McDermid was told the property was staked, he apologized for the confusion.

Deputy Town Attorney Steve Bengart said the applicant can ask that the request be tabled to allow time for the property to be staked and come back to the Board after it has been stake so that the neighbor has an opportunity to see it and come back and make comments. He noted that there will be no guarantees as to how the Board will vote. Mr. D'Amato said the other option is to have the Board vote on the request.

Mr. Mathur said they can live with the plan and extend the length but stay within the width. This way they won't have to come back for a variance. Mr. Mathur asked for the request to be tabled just in case he doesn't like the plan and needs to come back before the Zoning Board of Appeal.

**ACTION:**

Motion by David D'Amato, seconded by Gregory Thrun, to **table** Appeal No. 3.

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

MOTION CARRIED.

Chairman Michnik reminded all Board members that they need to update their Land Use Training Hours for 2014.

Meeting adjourned at 8:12 p.m.

Carolyn Delgato  
Senior Clerk Typist