

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday May 12, 2015  
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 (arrived at 7:22pm)  
Patricia Burkard                                      Gregory Thrun  
Richard McNamara

Zoning Board of Appeals member(s) absent: David D’Amato

Town Officials present:

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

Other interested parties present:

Charles M. Galante                      Marie E. Galante                      Ben Oppenheimer  
Alison Diana                                      Douglas Cipollone                      Will and Melody Winger  
Delia Laczewski                                      Gregg Spoth                                      Ryan Storke  
Arthur Fuerst                                      Charles Kelkenberg                      Russ Sciolino  
James Keller                                      Deodata V. Keller                      Matthew T. Garris

**New Business**

**Appeal No. 1**

Charles and Marie Galante  
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 440 square foot variance to allow for a 640 square foot detached accessory structure located at 8245 Golden Oak Circle.

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

**DISCUSSION:**

Neighbor notification forms are on file. Mr. Galante said he moved into the house on January 12, 2015, it has a two-car garage and he needs extra garage space to accommodate his 4-wheel drive pick-up truck. His truck is too big to negotiate the turn and fit in the garage adequately with his other vehicle and the other items he stores in the garage. He would like to have his vehicle inside and accommodate his belongings.

Chairman Michnik asked if the applicant looked at other options to accomplish what he needs. Mr. Galante said other than selling his truck and getting a smaller vehicle, no. He just bought the vehicle, he uses it to

tow the camper that he owns. They were looking for a three-car garage but there were none available in their price range in the area. Chairman Michnik asked what the applicant's alternative is if this request is not approved. Mr. Galante said his plan "B" would be to attach it to the house.

Mr. Thrun asked what else might be stored in the structure, Mr. Galante said he has a golf cart, a camper and his lawn care equipment. The existing garage is small. He could make the accessory building smaller but the size he is proposing would be ideal. There will be no storage on the upper level, it is for aesthetics only so that it will match the house. The addition will have Stucco and stonework that will match the materials on the house.

Mrs. Burkard asked if the applicant explored attaching the garage. Mr. Galante said he would lose six (6) or seven (7) feet of the existing driveway if he attached it, and it would encroach on the side entrance of the house that goes into the office. Mrs. Burkard asked about the materials he will use. Mr. Galante said he can't source the exact same brick that is on the house so he may use a dry stack of four (4) or five (5) feet. There would only be a small amount of this dry stack on the garage so it would not detract from the aesthetics. He does not want to go all the way down with the Dryvit, he would like something that can take a little abuse because it would be so close to the ground. Mrs. Burkard asked how far it is from the lake, Mr. Galante said he never measured it but a plot plan has been submitted for the Board members to review.

Mr. McNamara asked if there will be electric and water in the addition. Mr. Galante said yes to both, he would like a floor drain, not a sanitary unit. Mr. McNamara noted the 15' easement that the applicant needs to be aware of when he starts construction. Deputy Town Attorney Steve Bengart said the Building Department will not let Mr. Galante put it up if it is on the drainage easement. Mr. Galante said he will check the easement before he starts construction.

Chairman Michnik referred to Exhibit 1, which is a copy of photos showing homes with additional garages in the Loch Lea neighborhood. He voiced his concern with not knowing the exact location of these houses because there may be special exceptions as to why these additional garages were allowed. Without having the addresses he is not confident in making a recommendation to move forward with this request. He referred to the aerial photo and said the first thing someone will see when they drive down Driftwood is the proposed garage. Chairman Michnik noted that the applicant also has a storage shed on his property. Mr. Galante said that shed has lawn items in it, but he was told by the Building Department that he has to move that shed out, he confirmed the shed will be removed. Chairman Michnik asked if the applicant looked at connecting the proposed garage to the existing building with a breezeway or a trellis. Mr. Galante said he did, but the issue is that he would lose about six feet (6') of the driveway, he would have to tear out more of the driveway to do the construction, it would also encroach on the door going into the house, the power box that services the house is located there as well. Chairman Michnik said sometimes the architect can tie it in where the applicant would not lose any part of the driveway nor would he lose access to the door. Sometimes it give a finished look to such a huge building. He went on to say that he would hate to have the applicant put something in that does not conform with the rest of the community, he suggested the applicant take time to put something else together. Mr. Galante would like to have it constructed before winter. He does not have a builder lined up yet.

Mrs. Burkard asked what the doors will look like. Mr. Galante said it will have a carriage look to it.

Chairman Michnik asked if the applicant would be opposed to tabling the request to look into attaching it somehow. Mr. Galante said if he attached the garage, he would not need a variance. There is an increase

in cost if a breezeway is built. The garage would have to be fire rated if it is attached to the house. Mr. McNamara noted that it may be add another \$10,000 to the project.

**ACTION:**

Motion by Gregory Thrun, seconded by Richard McNamara, to **approve** Appeal No. 1, as written.

**ON THE QUESTION:**

Mrs. Burkard said her decision will be based on the topography and the layout of this particular lot, it is distinguished and different from others.

Mr. Thrun said his decision will be based on the higher additional cost. It still must fall within the easement that they have so there is no violation of that, any modifications must be made. He also considered the architecture that the applicant is trying to assume what it is and the tightness of the topography.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Daniel Michnik	Nay

**MOTION CARRIED.**

Vice-Chairman Ryan Mills joined the meeting at 7:22 p.m.

**Appeal No. 2**

Douglas Cipollone  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for an 850'- 900' front yard setback for a proposed single family home at 6575 Goodrich Road.

Appeal No. 2 is in variance to §229-41(A).

**DISCUSSION:**

Benjamin Oppenheimer, Alison Diana and Douglas Cipollone are present. Mr. Cipollone explained that Mr. Oppenheimer and Ms. Diana are the owners of the property. The variance request is because the house needs to be set further back because it is wider than the 100' of frontage. Mr. Cipollone provided copies of a diagram to all members, as hard copy of the diagram is on file. All neighbors that touch the property have been notified of this meeting via Certified Mail. There are eight (8) neighbor notification forms on file.

Mr. Thrun asked if the proposed road to the proposed house would become a Town road. Mr. Cipollone said no, it would only be used for that one (1) property. The home itself is approximately 110'-115' wide, it will have a four-car garage and a swimming pool in the back.

Ms. Burkard referred to Pictometry map 7/31 and asked what the distance is between the proposed driveway and the neighboring house. Mr. Cipollone said it is about 50'-60' between the adjacent house and the proposed driveway. The parcel is 29 acres in size. Mrs. Burkard said without the proposed driveway all 29 acres is useless land. Mr. Cipollone confirmed. The size of the house will be 4,000 square feet, it will be a single family ranch house.

Mr. Cipollone confirmed that the frontage is 100' and the setback from the road to where the property opens up is 700'. The property slopes down in that area, so they are trying to get a walk-out area there. The house will probably not be visible from the street because there are so many trees there. There is no problem with drainage in this area. Mr. Cipollone referred to a map from Wilson Environmental Technologies which shows a small wetland at the west edge of the property. This document is on file and is labelled Exhibit 1. The driveway will go through the wetland, they will obtain permission to do this if they need to. The utilities and septic system will be underground.

The parcel was purchased by the current owners 2 months ago. Mr. Mills asked if the owners were aware that a variance would be required when they bought the land. They were not aware. They purchased the property from the school. Mr. Mills asked if the applicants explored floor plans that would allow them to fit within the 100' frontage area. Mr. Oppenheimer said they wanted a ranch and, short of building it sideways and having the front face a neighbor or the woods, it didn't seem to work out especially with a driveway. He spoke with John from JRZ who indicated it was obvious to him, especially because of the topography of the land, that there was no other way to do given the fact that the applicants want a walk-out basement and a ranch. Mr. Cipollone said 15' setbacks are required so that takes the allowable width down to 70', which is a normal lot in a subdivision. They have to build past the wetlands but it may not be back as far as 850'. Mr. Mills asked the applicants what they would do if the variance was denied. Mr. Oppenheimer said he does not know what they would do. Mr. Mills asked if they plan on putting any other structures on the property. Mr. Oppenheimer said he has no plans for additional structures, he wants to build a home and a pool for his family. They like nature too so they are planning a hiking trail in the back. Mr. Mills asked if there are plans to sell off any parts of that land or do an open land development. The applicant's said they do not want to do that. Mr. Mills asked if they are amenable to that being a restriction if the request was approved. Mr. Oppenheimer said he does not know what the legal ramifications of that are, so he would have to speak with someone who could advise him properly. He supposes any restrictions would be potentially objectionable. Right now he wants one home on that property for his family.

Chairman Michnik said he is concerned with the fact that the applicant's purchased the land without knowing the regulations of the Town. Now they are asking the Board to make an exception to the rule on something they did not do their homework on. Chairman Michnik said this is a huge variance. He suggested the applicant request a tabling so they can re-gather information on the questions that were asked of them. One of those questions referred to a "plan b" if this request was denied, what would the applicant do with the property? Chairman Michnik said this is a self-created issue and based on that it falls on the applicant's shoulders. Mr. Oppenheimer said he likes to give specific answers, he is a dentist and does not know about land development. The "homework" is more like understanding a lot of nuances, there are eight (8) people at this meeting that can help decide about these nuances. Mr. Oppenheimer asked Mr. Cipollone if the property is of value for their home or should they consider selling. Mr. Cipollone said they should try and get their home back there, there won't be an open development because that would result in a \$200,000 road instead of a \$50,000 road. The applicant is not financially ready to do that. Deputy Town Attorney Steve Bengart said if they put the restriction on the approval, that's forever, so the applicant may want to seek advice.

Mr. Thrun said the restriction would prevent it from becoming a family parcel, where there are three or four houses built on the parcel for the children to live in once they've grown. Mr. Oppenheimer asked if that idea is objectionable to the Board. Mr. Callahan said if it is a restriction by this Board it would preclude it from ever happening. Mr. Oppenheimer asked if it would be a restriction at this point. Mr. Callahan said under current circumstances without any restrictions the applicant would have the opportunity to apply for an Open Development Area, which is not an as-of-right-use and would need Town Board approval. The

Open Development Area requirements are four (4) lots, 2 acre minimum for each lot. Mr. Oppenheimer said they would not want the restriction as discussed.

Will and Melody Winger live at 6545 Goodrich Road with their son. Their son spoke on their behalf saying the nearby properties are higher and there are ditches in that area; they do not want those ditches to disappear because of a new build. They are at the top of the hill and there is no ditch in the front; their property has to drain across the applicant's property; it diagonally cuts their frontage off. Drainage is the Winger's biggest concern. Melody Winger asked if the property will change from agricultural to anything else. While Mr. Callahan can't speak to the future actions of the Town Board regarding the Master Plan but he did say that there is no intention to change that zone; it is outside the sewer district so it will remain agricultural. Ms. Winger asked if it is going to be a horse farm. Ms. Diana said no.

Mr. Thrun asked if the applicants they would consider building any type of agricultural area where there is livestock like horses, cows, goats or llamas. Ms. Diana said she does not wish to have anything like that now or in the future.

Delia Laczewski of 6521 Goodrich Road said when the surveyors came out to survey the property they found that there was a gas line and a 100' easement on her side of the road, there was talk about putting in an access road right next to her driveway to get to that property in the back. She wondered if once they are in there if they can turn around and build another access road. Chairman Michnik said if there is land for sale and someone wants to buy it, the Town can't judge who wants to buy it. It is clarified that if it is a gas line easement it would not be access to the applicant's property.

Will Winger is concerned that a subdivision may be put there. Mr. Cipollone said there will be no subdivision. It is clarified that an Open Development Area would allow for a maximum of 4 lots (including the proposed house), with a 2 acre minimum for each lot. So there is the potential for three (3) additional lots, but that is the maximum, 4 total lots.

Mr. McNamara noted that there are 29 acres there, if four (4) houses are put there that's about seven (7) and a half acres per home, that's a large lot for a home. It could be a development back there with 20 homes.

Mr. Mills clarified that the variance request would be for a measurement between 600' and 650'. This is a substantial variance. He asked if the applicant was able to give anymore in terms of the variance amount, could the applicant go less than 850'. Mr. Oppenheimer said he does not know how that would be possible because they cannot impact the wetlands, they are trying to stay under a tenth of an acre. He would like to be excellent stewards of the community, he is a long time Western New York resident and is for "local" everything. Mr. Mills asked if the applicant thought of purchasing more land to make the frontage wider. Mr. Oppenheimer said that land is owned by someone else and is not up for sale. If the Board knows anything about that property being available, Mr. Oppenheimer would love to know about it. Mr. Mills suggested the applicant approach the owner and ask if he is interested in selling. Mr. Oppenheimer said the property is in the name of a trust that lives in California and they have turned down a number of offers in the past. Mr. Mills said maybe they will sell a portion of the parcel, not the whole thing. Mr. Mills said the question is if the applicant has explored this option. Mr. Oppenheimer said he has explored this to some degree.

Scott Winger said he is not objecting to them building back there. He asked if the applicant could come back to the Board years down the road and ask for a house to be built on the property even if there is a

restriction put on this approval that says they cannot. Chairman Michnik said yes they can come back to the Board.

Chairman Michnik asked the applicant if he would sell the property if the variance was denied. Mr. Oppenheimer said yes, after this conversation, yes.

Mrs. Burkard asked if the applicants could live with the restriction knowing that they could come back to the Board when and if their children wish to build on that property. Mr. Oppenheimer would hate to do that, he would feel like it was a hammer over his head, to wonder if his children can live on a piece of land with him that is big enough for 30 houses, he doesn't think it is right. This is an unreasonably large size property for one home, he is avoiding a development by saying he wants to build a couple of houses for his kids, who are six (6) and eight (8) years old, potentially in the future. There seems to be plenty of room for everyone to live in this community and the property can substantiate it.

Mr. Thrun said if the applicant bought more property they would still have to worry about the wetlands.

Deputy Town Attorney Steve Bengart noted that there are other projects that could happen at this location that would be much bigger than four (4) houses.

#### **ACTION:**

Motion by Patricia Burkard, seconded by Richard McNamara, to **approve** Appeal No. 2, as written.

#### **ON THE QUESTION:**

Mr. Thrun said granting the variance would not substantially change the character of the neighborhood, especially considering what the neighbors are saying and what they would prefer to have, rather than a larger development, a smaller at max 4 developments. There is no other way unless they could purchase that property to make any changes to that. At this present time it is something that may or may not be feasible. It is a substantial variance but that property is landlocked so there aren't much options for what they want to do with it. He said it is self-created because they could have done more research before they bought the property. He does not think the granting of the variance will have an adverse impact on the physical environment and conditions of the area. If they want to have hiking trails and other natural resources, other than animals, he could see where the Board would approve this.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

#### **Appeal No. 3**

Greg Spoth  
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a .3 acre variance to allow for a lot split of 1.03 acres at 9270 Lapp Road.

Appeal No. 3 is in variance to §229-39(B).

Chairman Michnik recused himself and left the dais. Vice-Chairman Mills presided over the meeting.

**DISCUSSION:**

Greg Spoth is present and explained they are putting a house out front on a farm that he owns on Lapp Road. It is a 103 acre farm. Most of the farmland, about 86 acres of it, is under an easement and is protected farmland. The piece of property that the variance request is for is not part of the easement. On the north side of the lot is a small field, just under an acre in size, it is sandy, fertile soil and that location is ideal for what they are doing there right now. They do a lot of retail farm including U-Pick. They want to keep that small 1-acre parcel of farmland with the farm. Mr. Spoth said one day they may have to sell the house and if and when that day comes they want to try and keep that small piece of farmland with the farm. He is in the process of selling the farm to his son. They grow small patches of berries and herbs and that small piece of land is very important to the farm. They have no intention of selling the house.

Mr. Mills asked what Mr. Spoth's intention is for that particular parcel, Mr. Spoth said he owns it and will build a small ranch house on it for him and his wife to live in. His son is going to buy the existing house. Mr. Spoth explained that he does not want to take any more land away from the farmable area.

There are 2 neighbor notification forms on file.

Mr. Callahan clarified that 1.33 acres is required by code to be considered a conforming lot.

Mr. Spoth said on the north end of that small parcel is a permanent planting of blueberries, if they go back the required 100' into that field, it would be lost because there is not enough room between that 400' property line and the blueberries.

**ACTION:**

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** Appeal No. 3, as written.

**ON THE QUESTION:**

Vice-Chairman Mills noted that there is testimony from the applicant that there is optimal soil, fertile farmland that has been utilized for quite some time. Based upon the overall size of the parcel and the character of that neighborhood it doesn't seem like it would be a large scale detriment.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye

MOTION CARRIED.

Chairman Michnik returned to the dais.

**Appeal No. 4**

Ryan Storke-CEC Energy  
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 94' variance to allow for a 154' wind turbine at 10881 Rapids Road.

Appeal No. 4 is in variance to §173-4(C).

**DISCUSSION:**

Ryan Storke is present and explained that he is looking for a height variance of 94' for the wind turbine. It is a lattice tower on a foundation with a Bergey 10kw on a 140' tower. The setbacks on the site map show 1.5 times the tower height, which meets code. Mr. Storke said he is in contact with the DEC and FEMA to discuss insurance due to the flood zone location on the project site. The leasing company carries full insurance on the machines.

There are no neighbor notification forms on file. Mr. Storke said Mr. Gehl was supposed to obtain the neighbor notification forms and submit them, he has not yet. Mr. Mills asked if the applicant wants the Board to table the request. Mr. Storke said he is not sure, but said he would like to take more questions from the Board before an action is taken.

Mr. McNamara asked what the fall zone in acreage is. Mr. Storke said it is a 230.5' setback distance to meet the 1.5 requirement, he does not know the acreage. Mr. McNamara asked what the total kilowatt usage is for the farm. The instantaneous draw on the farm is unknown, the total energy consumption of the farm is 2600 kw hours a year, that machine will produce 1600kw hours a year. Mr. McNamara asked if solar power was considered. Mr. Storke said the footprint for solar would be larger. Mr. McNamara said the footprint of the land in the fall zone for a wind turbine cannot be used for anything else but farming. Mr. Storke said that is all the Gehl's will do there anyway. He went on to say the Gehl's would need about 40 solar panels and they don't go on rooftops on aging facilities. The Gehl's did not want ground mounts because it would take up too much land space. The land around the turbine can still be farmed. The resource in this town for wind is much higher so the dollar per kw hour is greater with wind than it is with solar, more energy will be produced for less amount of money with a wind turbine than with solar panels. Mr. McNamara asked what the cost is for a wind turbine. Mr. Storke said the purchase price for a wind turbine is \$85,000, however the Gehl's are not purchasing it. They (the Gehl's) will spend \$20,000 over the next 20 years. It will produce three-quarters of their power.

Mr. Thrun said there is a trailer and a broken down barn on the property, he asked what building the turbine will be supplying energy to. Mr. Storke said the energy will be supplied to the homestead, which is across the street and it will be interconnected to the trailer that houses the chickens on the other side of the property.

Mr. Mills asked if the tower can be moved back farther. Mr. Storke said yes, the wire would need to be increased which would increase the cost a bit and the lease would have to be resigned for this change. Mr. Mills would like to see it put back further from the road towards the middle of the parcel. Mr. Storke said that can be done and it would not affect wind productivity. Mr. Storke said he guarantees that the tower will never come close to that road if it were to fall, and it won't fall. He has never had a tower fall, no part will detach and bounce. If it were to fall it is engineered to fall horizontally. Mr. Mills suggested the setback by 341'. Mr. Storke would have to talk to the customer before agreeing to that. The cost to move it back is \$15.00 per foot. Mr. Storke has been in this business for six (6) and a half years.

Mrs. Burkard asked about ice throw. Mr. Storke explained that a wind turbine blade is just like an airplane blade which has to be de-iced or it changes the dynamics of the blade. The blade on this wind turbine is not a long blade so the throwing force is minimal. If the turbine were to go down, if the grid were to go down and an ice storm came in for 2 or 3 days and there was 2 inches of ice build-up, it changes the aerodynamics of the blade so that it can't operate efficiently. The turbine will start to spin, the ice will crack and within 40' around the turbine the ice is going to fall off, the ice is not going to get thrown on a machine this small. The tip speed of this size turbine is about 62 miles an hour.

Deputy Town Attorney Steve Bengart said this property has a conservation easement on it, he would like to check the agreement to make sure this is allowed. He suggested that if the Board approves the variance they approve is subject to the Town Attorney's office verifying that the action is allowed under the conservation easement with the Town and the Western New York Land Conservancy.

Chairman Michnik voiced his concern about moving the turbine farther back. He referred to Mr. Mills' suggestion of moving it back 100'. Mr. Storke asked why 100' and if that 100' could be cut in half. Mr. McNamara said there is a 50'-75' buffer at the road. Mr. Mills said this is a substantial variance. Mr. Mills suggested moving it back for safety reasons, which Mr. Storke partially addressed. Also, if the turbine is set back on this large parcel it has less of a visual impact for surrounding neighbors and those travelling down Rapids Road. Due to the size of the parcel Mr. Mills thinks it will be more balanced if the turbine is placed more towards the middle of the lot. Mr. Storke said except for the lot is farmed and is partially in a wetland and the applicant stressed that they don't want a multitude of tile lines disrupted when installing this turbine. The depth for installing the turbine is 5' into the ground; tiles will be disturbed. Mr. Storke said there is no added safety gained by moving the location of the turbine back another 100', he questioned the reasoning behind the request for 100 additional feet. He is willing to go 50' back and he has the authority from the Gehl's to offer that. He is willing to "eat" 50' of cost but not "100".

#### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written with the following conditions:

- The actual structure be located approximately 291' back from Rapids Road, towards the central portion of the parcel.
- Contingent on the Town Attorney verifying that this tower can be constructed on this parcel based upon a conservation easement and verification with the Western New York Land Conservancy.

#### **ON THE QUESTION:**

Mr. Mills said this particular variance request is different from some other requests in that this is a very rural area with not a lot of homes nearby. The character of this area is mostly farmland. Granting the variance would not seem to have an adverse impact on the character or any of the physical environmental conditions. It is noted that this request was properly advertised and there were no neighbors that expressed any concerns to the Town, so the Board is proceeding without neighbor notification forms. Mr. Storke said they legally have to notify the State Department and the neighbors no matter how many 1,000s of feet away they are. He will forward a copy of this notification to the Town to keep on file.

Mr. Callahan said the Board should take an action under the State Environmental Quality Review Act (SEQRA) to identify that there are no significant environmental impacts associated with the installation of the wind turbine based upon the Short Environmental Assessment Form (SEAF), which is on file. Deputy Town Attorney Steve Bengart said this needs to be done prior to approving the variance request.

Mr. Callahan said the Building Department is the approval authority in terms of any building permits required for not only the wind turbine but any accessory structures as well.

Mr. Mills withdrew his motion, Chairman Michnik withdrew his second to the motion.

The SEAF is reviewed.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, pursuant to Article 8 of the Environmental Conservation Law that a Negative Declaration be **issued** by the Zoning Board of Appeals based upon the submitted application, site plan and the Short Environmental Assessment Form (SEAF).

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written with the following conditions:

- The actual structure be located 291' back from Rapids Road, towards the central portion of the parcel, referring to site plan C-1 dated April 2, 2015 which shows the setback from the road at 241'. That setback will now be approximately 291'.
- Approval is contingent on the Town Attorney verifying that this tower can be constructed on this parcel based upon a conservation easement and verification with the Western New York Land Conservancy.

There are no neighbor notification forms on file but testimony was heard from Mr. Callahan that there was proper notification to neighbors, there was proper notification published and the property was staked with proper notification. No comments were received by the Town either verbally or written.

**ON THE QUESTION:**

Mr. Mills said this particular variance request is different from some other requests in that this is a very rural area with not a lot of homes nearby. The character of this area is mostly farmland. Granting the variance would not seem to have an adverse impact on the character or any of the physical environmental conditions.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 5**

Arthur Fuerst  
Residential Single Family

Requests the Board of Appeals approve and grant:

- A.) A 1,152 square foot variance to allow a 1,152 square foot detached accessory.
- B.) An 8' variance to allow for a 24' tall detached accessory structure
- C.) A 3' variance to allow for a 12' tall overhead door.

All requests apply to a proposed detached accessory structure at 9705 Clarence Center Road.

Appeal No. 5 is in variance to **A.)** §229-55(H), **B.)** §229-55 (E) (2), **C.)** §229-55 (I).

**DISCUSSION:**

Arthur Fuerst is present and explained that he needs storage for his RV, tractor, and his wife's summer lawn furniture.

There are seven (7) neighbor notification forms on file.

Mr. Mills asked if any other accessory structures on the property will be removed. Mr. Fuerst said no. Mr. Mills asked if the other shed can come down. Mr. Fuerst said no because that is his wife's potting shed. Mr. Mills said this is a large variance. Mr. Fuerst said it would not be seen because his wife wants him to plant a berm of pine trees on the north side of it, which faces the street. Mr. Mills said the residents on Creekview will see the structure. Mr. Fuerst said there are trees there and he thinks the neighbor at 5975 Creekview would rather have the structure up because Mr. Fuerst has family visit all the time and the proposed structure will act as a buffer for noise and things of the sort. He spoke with each person around him and they all were fine with it. Mr. Mills asked if he can get away with any less storage. Mr. Fuerst said he actually wanted something larger but then he would have to put in another road all the way to the back, he and his wife compromised so that it will be smaller than what he wanted, so no he cannot go with a lesser size structure. Mr. Mills asked if planting a row of pines on the north and the west side of the property to act as a visual buffer was made a condition of the approval, would the applicant agree to that. Mr. Fuerst said yes, he will agree to that.

Mr. Fuerst clarified that the height of the structure will actually be 17', so the variance request would be for 1' to allow for a 17' tall structure.

Chairman Michnik asked for details on the photos that Mr. Fuerst submitted, the photos are on file. Mr. Fuerst said Exhibit 1 is a grouping of photos that show barns that are all within a block from his property. Chairman Michnik explained that some of those photos of barns located on properties that are zoned agricultural so those barns are allowed. Mr. Michnik voiced his concern about how big this structure will be.

Mr. Fuerst said since he added on the addition for his mother-in-law he has to change the driveway going into the back because he doesn't want anyone to hit the house. They are figuring out landscaping now so that the proposed structure won't be seen. It will be a steel building with a steel roof, the front will be brick to match the other buildings. Mr. Fuerst and his son will construct the building, he is leaning towards Potter Lumber for the materials.

Mr. McNamara clarified the variance request stating that if the walls are 14' than the height would be 18', therefore the variance request would be for 2'. Mr. Fuerst agreed with the correction. It will be a pole barn with a concrete pad inside, but the pad would not go in this year. There is a possibility for electricity to run to the barn for lights. He would like to have a floor drain, but there is no definite plan yet. There will be windows, a man door and two (2) 10' garage doors that will match the doors on the other structures.

Mrs. Burkard voiced her concern regarding the proposed location of the structure and the size of the structure. She asked if it could be placed in the back of the property. Mr. Fuerst said he could but then he would have to make a road to it, and it would spoil certain areas. He has had major battles with his wife that he has to save the gardens near the garage and she has to be able to see the fence with the door on it. He does not know what color the barn will be, his wife will decide that.

Mr. Thrun asked if there was thought of making this structure big enough so that one of the other structures could be removed. Mr. Fuerst said yes but his wife wants the old buildings restored. They have lived there for six (6) years, prior to that Mr. Fuerst was a resident of Clarence. Deputy Town Attorney Steve Bengart asked if it would be beneficial to have Mrs. Fuerst present at a meeting to understand that the Board might approve this structure if one of the other existing structures is removed. Mr. Fuerst said no. If he had to choose to remove a structure it would be the chicken coop. He is not allowed to have chickens per the Zoning Law so the coop is not being used for its intended purpose.

Mr. Mills asked if the applicant thought of using other materials to make it more appealing. Mr. Fuerst would like to make it look like his house but that would be a lot of money. Mr. Mills suggested a vinyl component to make it aesthetically pleasing. Mr. Fuerst likes the steel because it is low maintenance. His wife wants it to look like a barn so it fits into the character. Mr. McNamara suggested an eastern white pine with a dark stain to hide it from the neighbors. Mr. Fuerst said that would require maintenance. He went on to say that his wife is very cognizant of the barn not sticking out and she will make it blend into the character by her color choices.

Chairman Michnik asked if the applicant thought of moving the structure to the eastern part of his property. Mr. Fuerst said he has but then he would have to build a road. Chairman Michnik said there is a lot of congestion at the west end of the property and if he wants to park his RV in the barn he might be better off moving the structure to the east end, there is already vegetation to hide it from the road at the east end. Chairman Michnik is not in favor of moving this forward because they do not have blueprints to show him what the building will actually look like and he does not think the proposed location is the right spot for the building.

Deputy Town Attorney Steve Bengart said without more definitive answers it appears the Board will not be in the position to grant the request, if it is denied it is difficult to re-open it.

Mr. Fuerst was told that he needs to come back to the Board with a rendering of what the proposed structure will look like, the details and the size. He asked for his request to be tabled.

#### **ACTION:**

Motion by Gregory Thrun, seconded by Richard McNamara, to **table** Appeal No. 5 until the applicant is ready to provide the information requested.

Richard McNamara Aye  
 Patricia Burkard Aye  
 Daniel Michnik Aye

Gregory Thrun Aye  
 Ryan Mills Aye

MOTION CARRIED.

**Appeal No. 6**

Charlie Kelkenberg  
 Agricultural Rural Residential

Requests the Board of Appeals approve and grant:  
**-for proposed building lot 1:**

- A.) A 16.25' variance to allow for a lot split with the frontage of 133.75'.
- B.) A .48 acre variance to allow for a lot split with a total acreage of .85 acres.

**-for proposed building lot 2:**

- C.) A 16.29' variance to allow for a lot split with the frontage of 133.71'.
- D.) A .5 acre variance to allow for a lot split with a total acreage of .83 acres.

All requests apply to SBL# 30.00-3-39.111.

Appeal No. 6 is in variance to **A & C**) §229-40 (A), **B & D**) §229-39(B).

**DISCUSSION:**

There is a neighbor notification form on file for 9255 Martin Road, which is two (2) houses away from the applicant's property. There are no other neighbor notification forms on file. Charlie Kelkenberg is present and said the neighbor notification forms were sent to his adjacent neighbors.

Mr. Kelkenberg explained that this property was split in 2008, which resulted in the 147' existing lot, his father was the legal owner at the time. His brother brought in the surveys at that time and was told that's all he needed to do in order to split the lots. It is clarified that there was no variance granted for the 147' lot, 9275 Martin Road. Mr. Callahan noted that in 2008 these lot splits should have gone through a Minor Subdivision Review, as a result of that review the split would not have been allowed because it does not meet the minimum requirements. Mr. Bleuer researched the building permit for 9275 Martin Road and there is no mention of any activity other than the building permit.

Mr. McNamara asked how big the original plot was before it was cut up. Mr. Kelkenberg said his father owned the parcel that includes the industrial park off of County Road, he owned that strip going back and the frontage was part of the original Kelkenberg farm. All the Martin Road lots were sold off of his father's property prior to 2005, so the frontage is less than what is required now. Mr. Kelkenberg said before the law changed he was led to believe that any of the lots that were surveyed prior to 2005 would be grandfathered in, otherwise in 2004 they would have recorded all the splits and had deeds for all of them. Mr. Kelkenberg said these two (2) lots conform with the size of the rest of the lots in the area, and there is more square footage on these lots. Mr. Kelkenberg said there is plenty of greenspace behind the lots, there is a commercial space that his brother owns and a detention pond.

Mr. Mills said if the variance is not granted the applicant could sell the lot as one large lot, there is a market for that. Mr. Kelkenberg said one (1) large lot would have less value than two (2) lots. He went on to say that it is behind a commercial property which takes some value away from the lot. He also noted that an

average lot in Clarence should be at least \$60,000 on an existing street. Mr. Mills said if he was planning on getting \$50,000 per lot, could he sell the parcel as a whole for \$75,000. Mr. Kelkenberg said yes but he would lose \$25,000. Mr. Mills said in looking at the aerial photo he can see that there are parcels with larger frontage in the area. Mr. Kelkenberg's plan is to sell the lots; he is at this meeting on behalf of his father. It is his father's retirement money, to sell these lots. Mr. Mills said it is not only the frontage but the acreage that is a concern. He asked if there could be acreage deeded or purchased from 9300 County Road to make the lots larger and conform to the code. Mr. Kelkenberg is not sure if he can because of the retention area. Mr. Mills said it looks like there is some property before the retention area. Mr. Kelkenberg said it is a possibility.

Mr. McNamara asked about the commercial property that is adjacent to the parcel in question. Mr. Callahan clarified that the required setback from a commercial building is 100' to the property line of residential use.

Mr. Thrun asked what length the home would be, allowing for the variances on either side. Mr. Callahan noted that the side setback is 15' in that zone, so a large home could be built on the properties.

Chairman Michnik said if the variance is not granted the applicant still has a nice piece of property that is very valuable.

Mr. Mills said the applicant could ask the Board to table the request and look into the option of obtaining property, then come back to the Board again. However there is no guarantee that the request will be granted.

Tony Schuler, of 9255 Martin Road, asked if it would be to the applicant's advantage to have two (2) separate lots, tax wise. Chairman Michnik said that is not a question for the Board of Appeals.

Mr. Kelkenberg agreed to have the Board table his request.

#### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 6, per the applicant's request.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

#### **Appeal No. 7**

Russell Sciolino  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 30' variance to allow for a 75' front yard setback for the construction of a new single family residence at 7715 Goodrich Road.

Appeal No. 7 is in variance to §229-63(B).

#### **DISCUSSION:**

Russell Sciolino is present and submitted the neighbor notification forms, one is signed and the other has proof of mailing attached to the unsigned copy. Mr. Sciolino said he received a variance in the past to put

a house on this property, then he received notification from NYSEG that there is going to be an easement on his property going back 35'. His neighbor's house is about 40' off the road, the church across the street is 100' off the road. He is asking to move his proposed house back which will be even with his existing garage. The public utilities easement goes through the front structure on the property. Mr. Sciolino purchased the property last year, and was not aware of the easement because there was never an easement in that area, this is something the utility company is just putting in.

Mr. McNamara asked if Goodrich Road will be made much wider and if the culverts will be moved. Mr. Sciolino said he was told a shoulder will be put in, the drainage will be redone and all the trees have been removed. Deputy Town Attorney Steve Bengart said there will be some widening of the road, but it is not significant; the right of way has not changed. Mr. Sciolino said the telephone in front of his property is marked to be removed. He is putting a lot of money into building this house and he does not want to open his front door and have it hit a telephone pole. He understands what is happening in the area, if they widen the road it will be on his side of the road, because the west side of the road in front of his house is protected and can't be widened.

Mr. Thrun said the road is being worked on because it is deteriorating and because of flooding which means the drainage areas are going to be larger, that's why the easements for the utilities are being moved out, it will impact the applicant's house. He asked if the original plan was to run utilities in front of or underneath his house. Mr. Sciolino said he is asking for a 30' - 35' buffer.

Mr. Mills asked the size of the proposed house, Mr. Sciolino said it will be 2200 square feet. Mr. Mills asked about the two (2) existing structures. Mr. Sciolino said one (1) has already been removed and the other is scheduled to be removed on Memorial Day. Mr. Mills asked the applicant if the removal of those two (2) existing structures was made a condition of the approval, would he agree to that. Mr. Sciolino said yes.

Chairman Mills asked the applicant if 75' is enough. Mr. Sciolino said that will suffice. He thinks the pole will be moved 15' towards the back of his garage. The creek is about 300' back on his property, he is about 6' of fill back there. The back side of the proposed house will be about 5' of fill, doesn't want to do more than that.

Mr. McNamara brought up the septic system, Mr. Sciolino said that will probably go in front. Mr. McNamara said if the applicant asked for more of a variance, he can always build at less than what was approved. The placement of the utility pole needs to be taken into consideration and that exact location is unknown at this time.

#### **ACTION:**

Motion by Daniel Michnik, seconded by Richard McNamara, to **approve** a variance not to exceed 55' to allow for a front yard setback no greater than 100'.

#### **ON THE QUESTION:**

Mr. Thrun said due to easements that will be coming through, road changes as well, this is not a self-induced situation. This variance is being granted even though it is outside of the Traditional Neighborhood in order to allow for also septic in the front because of the wetlands in the back, the Board agrees to this variance.

Mr. Mills said the applicant provided testimony as well as documented evidence of the easement agreement with NYSEG regarding the 30' easement that seems to be necessary on this parcel as a result of the expansion of Goodrich Road. This can be distinguished from other front yard setback variances.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

### **Appeal No. 8**

Deodata Keller  
Residential Single Family

Requests the Board of Appeals approve and grant a 70' variance to allow for a 120' front yard setback for the construction of a new single family home at 5391 Thompson Road.

Appeal No. 8 is in variance to §229-52(3) \*established setback line of 50'.

Mr. Thrun recused himself and left the dais.

### **DISCUSSION:**

There are no neighbor notification forms on file, however there is proof via certified mail receipts that two (2) were sent, those receipts are in the file.

James and Deodata Keller are present. Mr. Keller said he is asking for the variance to put a home in line with the other homes next to it. The undeveloped property to the south of his property has a setback of 125', the house to his north is setback at 225'. It is a personal preference of the Keller's to be back further because they don't want to be right on the road at 50'. Mr. Mills said more homes on that street are at 50'. Mr. Keller said the newer ones are not. Mr. Mills asked the size of the proposed house. Mr. Keller said it will be an 1850 square foot ranch. Mr. Mills asked if the applicant's considered pulling the house forward to 80' or 100'. Mr. Keller said no, he does not want his backyard to be in the front of someone's house, if someone develops the vacant lot next to them. The lot to his south has been granted a 125' setback variance, although there are no current plans to build a house on that lot.

Mr. McNamara asked about the crossing for the part of Gott Creek that runs in front of the property. Mr. Keller said has to do a culvert, he is currently working with the DEC and the Army Corp of Engineers, he has the permit for application to the DEC, it has to go through a certain process and the DEC will decide where to put it because it is a protected creek at that point. Mr. McNamara suggested putting in a wider culvert because the neighbor to the north has a short one and there is a lot of stone caving in.

Mr. Keller has owned the property for three (3) years. They will hire someone to build the house, they have not decided who yet. They would like to get started within the next month. Chairman Michnik asked how much of the lot will be cleared of trees and brush. Mr. Keller said as minimal as possible. The front will be left for privacy, the back does not have a lot of shrubbery on it and they will keep as much preserved on the sides as possible.

**ACTION:**

Motion by Ryan Mills, seconded Daniel Michnik, to **approve** Appeal No. 8 as written.

**ON THE QUESTION:**

Mr. Mills said this variance request can be distinguished from other front yard setback variance requests in that the applicant has provided evidence and testimony that the neighbor has a setback of 125' and to keep in conformance with the neighbor's setback it seems appropriate to grant this variance. The proposed home is set at an angle so it will be almost directly in line with the neighbor to the south who has already received a setback variance.

Richard McNamara	Aye	Patricia Burkard	Aye
Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED.

**Appeal No. 9**

Matt Garris  
Residential Single Family

Requests the Board of Appeals approve and grant a 136 square foot variance to allow for a 326 square foot detached accessory structure located at 4176 Circle Court.

Appeal No. 9 is in variance to §229-55(H).

**DISCUSSION:**

Matthew Garris is present and explained that he wants to build a 14' x 24' shed, it will be similar to the one that is in the photo on file but there will be no garage door. The shed can be purchased at Home Depot. It will be placed on a concrete pad. He does not have a basement in his house, just a crawl space, so he has no room for the storage of his 2 year old son's toys.

Mrs. Burkard asked if the existing aluminum shed will be removed. Mr. Garris said yes, once the new shed is built, he will remove the existing shed.

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

Chairman Michnik asked if the applicant needs the shed that big. Mr. Garris said he would rather go bigger than to run out of space, he has a riding lawn mower, other mowers, and a snow blower that he needs to store as well. He discussed this with the Building Inspector and he will meet all the other requirements.

**ACTION:**

Motion by Patricia Burkard, seconded by Gregory Thrun, to **approve** Appeal No. 9 as written.

**ON THE QUESTION:**

Mr. Mills suggested a condition be placed on the motion that the existing shed be removed from the property within three (3) months of the final inspection of the new shed. Mr. Garris understood and agreed to this condition. Mrs. Burkard agreed to add this condition to the motion, Mr. Thrun agreed as well.

Richard McNamara	Aye	Gregory Thrun	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 10:15 p.m.

Carolyn Delgato  
Senior Clerk Typist