

Town of Clarence
 One Town Place, Clarence, NY 14031
 Zoning Board of Appeals Minutes
 Tuesday May 14, 2013
 7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:04 p.m.

Zoning Board of Appeals members present:

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

Town Officials present:

Director of Community Development James Callahan
 Deputy Town Attorney Steven Bengart
 Councilman Peter DiCostanzo
 Councilman Bernie Kolber (arrived late)

Other interested parties present:

Frank Rivett	Frank B. Rivett
Tim Hammer	Norman Abraham
Manan Varma	Jeffrey Shrader

Chairman Michnik said there are two applicants that are asking that their variance request be re-opened. One request is from 2004 and the other is from 2013.

Mr. Callahan explained that the 2004 request was for an appeal for a setback variance on Keller Road. The Zoning Board members at this meeting in 2004 were John Gatti, Ray Skaine, John Brady, Arthur Henning and Ronald Newton. The first action in July 2004 was a failed motion. In August 2004 it came back for a substantial setback. The variance was granted with two conditions which consisted of (1) the inclusion of a landscaping berm and (2) there will be no second residence allowed to be built on the property. The applicant has come back in 2013 to ask for an Open Development to create an additional lot on the property. This proposal was set to go before the Town Board when the Planning Department was made aware of the conditions. The applicant said he is creating a different lot so he would like to move forward with this, he asked that the Zoning Board of Appeals consider re-hearing his request.

Chairman Michnik said in order for the request to be heard again it would have to be a unanimous decision by the Board to allow the applicant to come back in front of the Board. The applicant would ask to change the conditions of the approval he received in 2004 and eliminate the clause that says he cannot put anymore houses on the property. There is a house currently on the property; the property is approximately 30 to 40 acres in size with several hundred feet of frontage. The house is setback 500'. There are a significant amount of wetlands on the property. The property adjoins neighbors up front along Keller Road; the controversy in 2004 was that these neighbors did not want a house built in their backyard. The applicant wants to build a house behind his which currently exists on the property; the

proposed house would be about 700'-800' feet back. It is clarified that the applicant has applied for just one house on this property. If he is granted an Open Development Area, that allows for four (4) lots.

Mr. Hickey has no problem with agreeing to re-open the hearing and having the previous minutes sent to the Board to make a secondary decision. Mrs. Burkard and Mr. D'Amato would also like to review the previous minutes. It is noted that if the hearing is re-opened that opens the Board up to a potential Article 78.

Mr. Callahan explained the second request was originally heard in January 2013. Zoning Board of Appeals members present at that meeting were Jonathan Hickey, David D'Amato, Daniel Michnik, Patricia Burkard and Ryan Mills. This was a request for a garage addition at 5935 Strickler Road. The approval included a change in the size of the structure from 30' x 30' to 22' x 30' and the size change was acceptable to the applicant. The applicant has applied for a building permit for a structure 30' x 34'.

It is decided that a copy of the previous minutes for both variances will be sent to the Zoning Board of Appeals members to review and discuss at the next meeting.

Appeal No. 1

Frank Rivett

Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 100' variance to allow for a 200' front yard setback for a proposed house at 10100 Shamus Lane. The property is located within the Strickler/Shamus Estates Subdivision and requires a 45'-100' front yard setback.

Appeal No. 1 is in variance to Map cover #3401.

Patricia Burkard recused herself from the discussion and vote. Alternate member Gregory Thrun will participate in the discussion and vote on Appeal No.1.

DISCUSSION:

Chairman Michnik read a memo from the Town Engineering Department dated May 13, 2013 which stated: "Please be advised that there appears to be Federal Wetlands on the parcel based on the National Wetlands Inventory Mapper. Any work in or near this area requires permits from the Army Corps of Engineers or a Determination of No Jurisdiction." The letter is on file.

Mr. Rivett is present and said he is looking for a 200' setback. The subdivision was designed and approved with a 100' setback. Mr. Callahan noted that the setback in the Agricultural Rural Residential Zone 45'-200'. Mr. Rivett said the lot in question goes back about 800' so he has an opportunity to give himself a bit more on the front yard. Mr. Rivett referred to the survey of the property and noted that there is a drainage ditch on the property that is an easement from the Town. He staked the property at 100' and it was on top of the ditch, the ditch is large and has twin 36" pipes. If a house was put at 100' there would not be enough room for a sand filter. He is concerned with the quantity of water that runs through that ditch and when it needs to be maintained, they would be digging 10' from the house.

Mr. Thrun said it seems to be a reasonable setback given the size of the drainage ditch. He asked if the applicant had thoughts of moving the house further back. Mr. Rivett said he would not go beyond 200'.

Mr. Hickey asked for details on the proposed house. Mr. Rivett said he, his wife and their three daughters will live in the house. They just hired an architect so they are in the early stages of design. He has no dimensions at this time. Mr. Rivett does not want to go so far back on the property that the house cannot be seen. He does not want to be on top of the ditch, the ditch is a major problem for him. This lot is 9.2 acres, the largest piece in the subdivision. Mr. Hickey asked how long the applicant has known about the issue regarding the drainage and the 100' issue if a house were to be built on this parcel. Mr. Rivett said he found out about the 100' issue about a year and a half ago. Mr. Callahan noted that the setback is 100' on the mapcover; the Town subsequently changed the Zoning Law to allow greater flexibility, which included a greater setback, in the Agricultural Zone, especially as it relates to larger lots. During the design approval there was not a lot of thought given to the major drainage channel that runs through there, to put a house on that would be an injustice. The Town should have done more research when establishing the 100' setback with regards to the drainage ditch that exists.

Mr. D'Amato asked if the applicant looked at relocating the house. Mr. Rivett explained that he wants to keep it up front on the property and if he moved it to either side of the ditch he would have less of a side yard and would be encroaching on the neighbor's property. There are also wetlands on the property that need to be considered. The applicant is looking to start building next year.

Two neighbor notification forms are on file.

Mr. Rivett plans on building a 3800 square foot house on the property, which is the average size home in the subdivision.

ACTION:

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

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

MOTION CARRIED.

Appeal No. 2

Tim Hammer
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 5' variance to allow for a 10' side yard setback on the north side of a proposed house at 4200 Gunnville Road.

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

Patricia Burkard returns to the dais, Gregory Thrun returns to alternate member status.

DISCUSSION:

Two neighbor notification forms are on file.

Tim Hammer is present and said he is requesting the variance because of the narrowness of the lot. He lives on the lot to the south and wants to build a house for his son on this lot. The lot is 60' wide and the

house is 30' wide. He wants to have enough room for a driveway to fit along the south side of the house, which will lead to a garage that will be built in the future.

Mr. Hickey asked the applicant if there is any other way he can accomplish what he wants to do on this lot. Mr. Hammer said this is the only way given the footprint of the house he wants. The house is about 2,000 square feet in size. Mr. Hammer said he has owned the property at 4190 Gunnville Road since 1978. He took down the house that was at 4200 Gunnville Road, that house was closer to his than what he is proposing now.

ACTION:

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

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

MOTION CARRIED.

Appeal No. 3

Lynn Aronica
Residential Single Family

Requests the Board of Appeals approve and grant a 500 square foot variance to allow for the construction of a 700 square foot pool house at 9042 Shannon Court.

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

DISCUSSION:

Two neighbor notification forms are on file. There is notice from the Home Owners Association that they have approved the applicants request as the bylaws have been met. This notice is on file.

Norman Abraham, designer, is present and explained that the applicants want to construct a pool house in their backyard. It is a three room structure consisting of a great room, a changing room and a bathroom. It is positioned 15' from the house and adjacent to the pool. It would be a simple trench footer, concrete slab on grade, wood frame structure and the architectural style will match the house.

Mr. Mills voiced his concern with the size of the structure; it is a large accessory structure. Mr. Abraham said the applicants may be reconsidering the size of the structure because the bids came in higher than what they were planning on spending. He said they are also considering eliminating the plumbing to help bring the cost down. Mr. Mills suggested tabling the request until the homeowners decide on a size. Mr. Abraham said the applicants are not in attendance this evening because they are out of Town. The applicants are not in an immediate rush to have the structure built. Mr. Abraham agreed with the suggestion to table the request.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **table** Appeal No. 3.

ON THE QUESTION:

Mr. D'Amato asked that the homeowners make themselves available for the next meeting as he has questions that he thinks only they can answer.

Chairman Michnik said the applicant was made aware that the property must be staked. The stakes were put out late so not all Zoning Board members saw the stakes when they visited the site. If the request is changed the stakes must reflect this change in a timely manner.

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

MOTION CARRIED.

Appeal No. 4

Taruna Varma
Residential Single Family

Requests the Board of Appeals approve and grant a 52 square foot variance to allow for a 252 square foot covered detached patio at 9205 Beech Meadow Court.

Appeal No. 4 is in variance to § 229-55.

DISCUSSION:

Manan Varma is present, Taruna is his wife, she is not in attendance. Jeffrey Shrader, general contractor and owner of Empire Construction Services, is also present.

Two neighbor notification forms are on file.

Mr. Mills reads a letter from the NYS DEC dated April 29, 2013 directed to Timothy Lavocat: "This letter is in response to an email request from Mr. Jeffrey Shrader regarding the above referenced project. Please be aware that pursuant to the provisions in Article 24 (Freshwater Wetlands) of the NYS Environmental Conservation Law, no Department permit will be required for the above noted work. This determination is based on the plans prepared by Armitage Architecture titled "Site Plan & Demolition Plan", drawing A100, dated April 1, 2013 (copy enclosed). If you have any questions or comments in regard to this letter, or the NYS Environmental Conservation Law, please do not hesitate to contact Mr. Mark Passuite of my staff or me at the above telephone number." The letter is signed by David Denk, Regional Permit Administrator. The letter is on file.

Mr. Shrader said he will be constructing the detached patio. It is proportional to the yard, the house and the pool. There is also an addition being constructed as depicted in the shaded area of the plan titled A100. This plan is in the file. The gazebo is a hipped roof structure that has no walls. It will have eight (8) support pillars on it, it will be electrified and will have gutters on it. The gutters will be tied into the run-off system for the house and the addition area. The gazebo will have a concrete pad with about a foot of concrete extending out and around the structure. Just past the pavilion will be an 18' x 36' swimming pool with about 4' of concrete around it with two areas on either end for sunning themselves and a small table.

Chairman Michnik asked if there is any transition planned from the house to the gazebo. Mr. Shrader said there is going to be a pergola that will be permanently attached to create a courtyard affect.

It is clarified that the spray painted marks indicated the variance request. The existing fireplace will be removed. The applicant has owned the house for five years.

The applicant does not have elevations. The columns will be recessed panels made out of wood.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 4, as written.

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

MOTION CARRIED.

Motion by Ryan Mills, seconded by Dave D'Amato, to **approve** the minutes of the meeting held on April 9, 2013, as written.

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

MOTION CARRIED.

Meeting adjourned at 7:55 p.m.

Senior Clerk Typist
Carolyn Delgato