

Town of Clarence  
One Town Place, Clarence, NY  
**Zoning Board of Appeals Minutes**  
Tuesday June 10, 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

Other interested parties present:

Peter Caroccio	Greg Schimenti
Mike Washington	

Motion by David D'Amato, seconded by Gregory Thrun, to **approve** the minutes of the meeting held on May 13, 2014, as written.

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

MOTION CARRIED.

### Old Business

#### Appeal No. 1

Peter Caroccio and Holly Moschiano  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 36" variance to allow for a 76" top of foundation wall over the center of the road at the center of lot.
- 2.) A 17' variance to allow for a 72' front yard setback.

Both requests apply to the construction of a new home at 4055 Elma Road.

Appeal No. 1 is in variance to §229-23(A) and §229-52 (1).

**DISCUSSION:**

Andrew Romanowski from Alliance Homes is present along with Peter Caroccio. Mr. Romanowski noted that at the previous meeting the Zoning Board of Appeals members asked the applicant to do three (3) things. One was to stake the property, this has been done. Secondly, the applicant has revised the drainage plan to reduce the impact of the swales to the rear lot; this was done by introducing a drainage inlet and a drain pipe that catches that water and takes it to the storm sewer. Mr. Romanowski submitted the plans to the building inspector and the engineer. He was handed a memo from the Engineering Department dated June 9, 2014 at this meeting. Mr. Romanowski said items 1, 3, and 4 of the memo are standard. The second item is requesting a test pitch be dug prior to issuance of the building permit, to determine the exact location of the bedrock, then the drainage plan would be changed accordingly. The data that they used for the depth of the bedrock was taken from soil boring tests that were done, those tests were thought to be fairly accurate. Mr. Mills read the memo dated June 9, 2014 from Timothy Lavocat to James Callahan: "The Engineering Department has reviewed the proposed Grading and Drainage Plan for the proposed residential structure to be located at 4055 Elma Road by Nussbaumer & Clarke, Inc. dated REVISED May 23, 2014 and offers the following: 1. The yard drainage system is to be designed to utilize perforated PVC pipe within a trench containing clean no. 2 stone and filter fabric, possibly to bedrock. 2. Test pits are required to be excavated along the north, south and west property lines (a total of three test pits) to determine exact depth of bedrock prior to issuance of building permit for the purpose of detailed drainage design. This information is to be utilized for final drainage plan design. 3. A highway work permit from the Clarence Highway Department is required for any and all work performed within the public right of way of Elma Road. 4. Further review of the final grading and drainage plan is required at time of building permit application and review. The final plan is to include information determined from items 1 and 2 above." The memo is on file.

Deputy Town Attorney Steve Bengart said he met with the Town Engineer, Mr. Lavocat, and reviewed the plans. Mr. Lavocat thought a French Drain would be a better way to handle the drainage. Deputy Town Attorney Steve Bengart also met with the applicant's attorney, Tracy Heims, where they negotiated an Indemnification and Hold Harmless agreement that if the Board were to go forward and approve the variance, it is acceptable to her, and immediately following tonight's meeting, the parties will sign the agreements. Deputy Town Attorney Steve Bengart said he is comfortable with the agreement.

Mrs. Burkard asked how much of the foundation will be showing. Mr. Romanowski approximately 2 feet of the foundation will show. The top of the foundation wall was changed in order to accommodate the difference in elevation. The drawings reflect how the builder will accomplish this. It is confirmed that it will not have a "hill" affect. Mr. Romanowski said they are not impacting the neighbors anymore with this plan that if there was no bedrock. The impacts on the neighbors will be less and will be positive. It is clarified that the measurement was taken from the crown of the road at the center of the lot. Mrs. Burkard asked if the applicant knew why the property owner who was at the previous meeting has her house up for sale, it is because she is so concerned about this request? Mr. Caroccio stated that the neighbors have 3 small children and have outgrown their home. The neighbor's told Mr. Caroccio that is why they have decided to move.

Mr. Caroccio referred to the wording in regards to the neighboring properties and their ability to not sue the town, and how that responsibility then falls to him as the homeowner. He does not know how they would be able to sue and prove that there was an impact on their property. Deputy Town Attorney Steve Bengart advised Mr. Caroccio that he is the attorney for the Town; he is unable to give him legal advice.

Mr. Romanowski said the reason for the additional setback is because they want to reduce the slope of the driveway so that it is not going to be a greater grade than others on the same road.

**ACTION:**

Motion by Gregory Thrun, seconded by Daniel Michnik, to **approve** the request by the applicant for a 36' variance in addition to what was presented in the memo from the Engineering Department dated June 9, 2014, the applicant is required to adhere to that memo. The approval of both variances is conditioned on the addition of the Indemnification and Hold Harmless Agreement that was negotiated by the applicant's lawyer and Deputy Town Attorney Steve Bengart.

**ON THE QUESTION:**

It is clarified that the Indemnification and Hold Harmless Agreement will be executed this evening, after the approval of the variance request. Mr. Thrun agreed to have this added to the motion, Mr. Michnik seconded the addition.

Mr. Romanowski noted that the slope from the driveway to the finished floor of the house is approximately 24". There will be no blasting, that is the whole purpose of the variance so they don't have to go into the rock at all.

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

MOTION CARRIED.

**New Business**

**Appeal No. 1**

Gregory Schimenti  
Restricted Business and Residential Single  
Family Zones

Requests the Board of Appeals approve and grant a .16 acre (1,960 sq. ft.) variance to allow for a total lot size of .96 acre (41,600 sq. ft.) for the purpose of a parcel line adjustment at 8291 Sheridan Drive.

Appeal No. 1 is in variance to §229-49(A) and §229-79 (A).

Chairman Michnik recused himself and left the dais. Richard McNamara will participate in the discussion and vote on this appeal.

**DISCUSSION:**

Gregory Schimenti is present and explained that he is seeking this variance so that he can sell the back portion of his lot measuring 110' by 65' wide to Steven Grant. Mr. Grant lives at 4733 Brentwood Drive, which is parallel to the length of his lot. Mr. Grant asked if he could purchase part of Mr. Schimenti's lot just to have an extension of his own, Mr. Schimenti understands that this would make it a non-conforming lot and that is the reason he is asking for the variance. It is clarified that Mr. Grant is looking to expand his backyard by the width of Mr. Schimenti's lot. Mr. Schimenti has a signed letter from Mr. Grant stating his intent to purchase. They have agreed on a price. The sale of the property is contingent on this variance being approved. Mr. Grant told Mr. Schimenti the sole purpose for acquiring more land is so his

grandchildren have more room to play in the backyard. He may extend his gardening a bit. The purchase price for the parcel is \$6,000 plus any cost the Mr. Schimenti may incur in processing this transaction.

Mr. Mills asked what the applicant would do if the request was denied. Mr. Schimenti said he would keep the land.

Mr. McNamara asked how deep the lot is on Brentwood to Mr. Schimenti's property line. Mr. Schimenti does not know.

There was another neighbor that asked to buy part of Mr. Schimenti's property, but that was years ago and that neighbor is past the request now.

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

Mr. Schimenti currently lives at 8291 Sheridan Drive, he has lived there for three (3) years; however it is on the market. He would like to move closer to Clarence Center.

**ACTION:**

Motion by Patricia Burkard, seconded by Richard McNamara, to **approve** Appeal No. 1 as written.

**ON THE QUESTION:**

Mr. Thrun asked if neighbor notification forms are needed for individuals along Brentwood. Mr. Callahan clarified that in terms of legal notification an advertisement in the paper and the notifications on file are acceptable.

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

MOTION CARRIED.

Chairman Michnik returned to the dais.

**Appeal No. 2**

James Gracz  
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow for a 6' setback from edge of existing pool to edge of proposed three (3) season room at 4080 Thornwood Lane.

Appeal No. 2 is in variance to the Town of Clarence Swimming Pool Regulations #1.

**DISCUSSION:**

Mike Washington, owner of Ivy Lea Construction, is present along with the property owner, James Gracz. A letter is on file authorizing an Ivy Lea Construction representative to represent the property owner. The sales representative on the project is present as well.

Two (2) Neighbor notification forms are on file.

Mr. Washington explained that currently there is an existing structure on the property. The distance he is looking for is from the corner of the existing patio to the corner of the pool. His client did not build the house but he is the first owner of the house, it was a spec house built in 2001. The pool was built in 2007. Mr. Washington is not sure if there is a variance on the installation of the pool. Mr. Gracz is not sure either. Mr. Washington said the existing footprint of the patio, which was built when the house was built and is 10' by 18.3'. The applicant is looking to go with the exact same footprint. A footer needs to be installed because there is a structure being attached to the house. The proposed structure will be the same size and height of the existing awning. That awning will be removed and a three (3) season room will replace it. The room will be insulated but not heated. Mr. Washington does not think there is a big character change as far as the neighborhood is concerned. The neighbors on either side said they have no problem if the variance is granted. The change will add value to the home and to the neighborhood.

Mrs. Burkard asked where the door is for the proposed addition. It is clarified that the sliding glass door is not right by the pool and is the only doorway to get into the room from the outside. There are stairs on the inside that will lead to a door of the heated living structure.

Mr. Mills said the setback of 6' presents a safety issue. He asked the applicant what can be done to mitigate this, perhaps a decorative type fence. He is concerned with such a narrow pathway that if someone falls they will go into the pool. Mr. Washington said currently the path is 6.3' from the edge of the pool to the corner of the patio, he referred to Exhibit A and said there is a 2' stone area between the patio and the walking deck of the pool. The corner will be in the exact same spot, so the 6.3' path will remain that size. He thinks the existing concrete patio was already there when the awning was installed and he knows that the concrete pad was there when the pool went in. Mr. Washington said a standard sidewalk is 5'. He does not see the pathway as a safety concern. There is a pool alarm in place. He does not know where a fence could be proposed near the pool. Mr. Mills suggested a wrought iron railing that locks and unlocks by the ladder around the concrete pathway, so no one can enter the pool area without going through that fence portion. Mr. Washington said he does not see that suggestion serving the purpose that Mr. Mills is looking for.

Scott Lyness is present.

Mr. Mills asked if the applicant explored any other type of fence running around the concrete portion with entry to the pool along the driveway to the east side of the property. Mr. Washington said it was not explored and went on to say that it would be a detriment to his client because there is a significant cost associated with putting a fence around the pool. He reiterates that the dimensions are not changing at all, he does not see a significant change in what they are proposing, from a soft sided structure to a hard sided structure. Mr. Mills asked about positioning the sun room on the back side of the house. This option was explored but the cost was too prohibitive to go out the back of the house. They would have to move a lot of cabinetry and fixtures on the inside of the home to be able to put a door and a staircase going down there.

Mr. Thrun said if the fence is installed right next to the concrete pad it narrows the buffer.

Chairman Michnik asked if the applicant explored moving the door around to different locations, perhaps to the west wall. Mr. Washington said the door is proposed on the southeast side of the house, this location gives the applicant the biggest area that goes onto hardscape already. It is also the furthest away from the

pool. This is probably the easiest way to come through the gate to get into their home without having to walk up the length. The sliding glass doors will have a child lock installed.

**ACTION:**

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

**ON THE QUESTION:**

Mr. Mills asked that a condition be added to the motion stating that the pool alarm will be maintained and operable. Mr. Thrun agreed to amend his motion to include this condition, Mr. D'Amato seconded the amended motion.

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

MOTION CARRIED.

Meeting adjourned at 6:55

Carolyn Delgato  
Senior Clerk Typist