

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday June 14, 2016  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:01 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D'Amato	Patricia Burkard
Richard McNamara	

Zoning Board of Appeals members absent: Gregory Thrun

Town Officials present:

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

Other interested parties present:

Paul McCarthy	Robert Friedman	Candace Wagner	James L. Wagner
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Motion by David D'Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on May 10, 2016, as written.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

### New Business

#### Appeal No. 1

Paul McCarthy  
Residential Single Family

Requests the Board of Appeals approve and grant a 1,200 sq. ft. variance to allow for 1,200 sq. ft. addition to an existing detached accessory structure located at 4995 Kraus Road.

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

#### **DISCUSSION:**

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

Paul McCarthy explained that he wants to put up the addition for storage of the vehicles his father left him. Robert Friedman said that there is an existing 1200 square foot garage built in 1952 and Mr. McCarthy wants to add 1200 square feet to that garage for the storage of the vehicles. The addition would be in a

remote spot on the property, he does not think it will be visible from any neighbors. It does not alter the character of the neighborhood. The representative distributes minutes of past approvals by the Board for similar requests.

Mrs. Burkard asked if the neighbor notification forms are from the neighbors on the north and south of the property, the applicant confirmed this. She agreed that the location is remote. The representative said the building materials will be concrete block, a shingle roof, the two buildings will be sided the same and will look like one building.

Mr. Mills asked what the applicant will do in terms of pavement out to the side garage bays. Mr. McCarthy said right now it will be stone, but eventually he will pave it. He confirmed that he will not operate a business out of this location. Mr. Mills asked if that was a condition of an approval, would the applicant consent to that, Mr. McCarthy said yes, it will be used strictly for the storage of automobiles. Mr. Mills asked if there was a plan to store anything else in the proposed structure. Mr. McCarthy said no. Mr. Mills asked if he could decrease the square footage of the proposed structure. Mr. McCarthy said no. It is clarified that there are two separate homes on the property, Mr. McCarthy lives in one and he has tenants in the other; he owns all the property. Mr. Mills voiced his concern noting that while the structure is not visible to any neighbors now, if the other house was parceled off it would be visible to that house. Mr. McCarthy said that is not going to happen.

Mr. Mills asked if there will be a lift in the garage. Mr. McCarthy said there is one lift in the existing garage, he will not be putting a lift in the new structure. He will not be doing any repairs in this structure, he had a repair shop on Goodrich Road.

Chairman Michnik asked how the condition of “no business being operated from the structure” is patrolled. Mr. Callahan said the neighbors usually let the Town know. If there is a complaint the Board will refer back to the minutes and enforce any conditions there is an issue with. Currently there is a bin with two cars stored within it on the property, Mr. McCarthy confirmed that the bin will be removed. Deputy Town Attorney Steve Bengart said it is within the Board’s purview to place a condition on the approval to restrict any further accessory structures from being built on the property and that if you wanted to do more you would have to come before the Board. Chairman Michnik asked how big the property was how many structures were on it. Mrs. Burkard asked if the current shed would be taken down, Mr. McCarthy said no. He stated that he had 10 cars he had to store and that he inherited a lot of stuff.

#### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 1

With additional conditions that the applicant not operate any business out of this structure and there will be no additional structures whether permanent or temporary located at 4993 or 4995 Kraus.

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

Mr. Mills just wanted to add as the variance is larger in nature the evidence shows that the property is secluded in nature and there are no neighbors close by and that he has no intention to sell the house in the near future. Deputy Town Steve Bengart asked if the applicant was in agreement with this and he said yes.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

## MOTION CARRIED

### Appeal No. 2

James L. Wagner  
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow detached accessory structure within the front yard of 4745 Harris Hill Road.

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

### **DISCUSSION:**

Mr. Mills stated that he was looking at 3 neighbor notifications from 8099 Sheridan Drive which is behind the residence, 4755 Harris Hill Road is on the north side and 4735 Harris Hill Road is on the south side.

Mr. Wagner, the owner of the property explained how he wants to put up a 24x25 garage in front of his home where he took down a big evergreen tree. They have had suggestions on putting it on the south side of their house where there generator and air conditioner is but they would have to move them and also would lose the light that they get in their house. The other suggestion was in the back, which would block their view from their patio. Another suggestion was to put in their open space in their backyard, which would mean a very long driveway and a distance from the house. All of them would be a lot more money and said it doesn't fit their budget.

Mrs. Wagner said they have lived there for 35 years and that she has a favorite tree that she doesn't want to cut down.

Mrs. Burkard said that she drove by and said that the garage would make them stick out in front of the rest of the houses on their street. Mr. and Mrs. Wagner also considered this and believe it will fit in nicely. They are always concerned with aesthetics.

Town Attorney Steve Bengart had an aerial view of the proposed garage, but Mrs. Wagner stated that that was not accurate and that it was an old picture because the old tree was still in it. Mr. Callahan said that was not a true reflection of the property so we should not use it.

Mr. D'Amato agrees that the applicants would make the garage look very nice, the concern is where the garage would be situated. The Board would like to see it on the south side of the house, but the Wagner's have a newly put in Bay window and another window that would be blocked off, and would also affect the lighting in their home. Mr. D'Amato also voiced the concern of setting a precedent and that other residents may want to place structures in front. Mr. Mills suggested an "attached" garage citing a higher re-sale value and eliminating the need for a variance, but also noting the need to re-locate the generator and air conditioner. Mr. Wagner knows a little about construction and believes the cost would be too high with all the variants involved.

Mr. D'Amato understands the applicants concerns, but must also take the entire community into consideration with these requests. He put forth another suggestion of a breeze way on the north side connecting the free standing garage to the house giving it a nice flow. This would set the garage back and keep it in line with the neighbors.

Deputy Town Attorney Bengart notes that the applicants concern is with the winter months and they agreed. He then asked them to consider asking the Board to adjourn this matter to avoid being denied and coming back with a new plan and new application and fee.

Mrs. Wagner asked if the breeze way option would still need the 42" down and the Board said that was a question for a builder, but most likely they would. Mr. Wagner also asked about future issues with sewers being input on Harris Hill. Mrs. Wagner then asked that if they went with the breeze way option if a variance was needed. They might need a variance for the front or side yard setback. Deputy Town Attorney Bengart suggested that may be looked upon more favorably, but a cost analysis would be needed. Mr. Wagner asked that if it turns out to be a 30 to 40% increase in their cost, would the Board consider the original request and Mr. Bengart said the Board has to consider it.

Ryan Mills cited Town Law section 267, directing all present to the board on the wall. All 5 factors must be looked at. The first one relates to an undesirable change would affect the neighborhood.

Mr. and Mrs. Wagner asked if an architect could be recommended and the Board is unable to do that. Deputy Town Attorney Bengart asked if the Wagner's would like the opportunity to come back and not make a decision at this time.

#### **ACTION:**

Motion by Ryan Mills, seconded by Dave D'Amato, to **table** Appeal No. 2.

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

To table the request and give the applicant time to bring back enough information for the Board to make a decision.

Richard McNamara	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

**MOTION CARRIED**

Meeting adjourned at 7:53 PM

Diane Nardilillo for  
Carolyn Delgato  
Senior Clerk Typist