

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday July 12, 2016
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
Richard McNamara	

Town Officials present:

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

Other interested parties present:

Charles Kelkenberg	Jeffrey Schneider	Andy Dagleish
Lucas James	Edward Lamarca	Pamela Schott
Dan Singer	Charles Kelkenberg	Richard Schott

Old Business

Appeal No. 6 (from May 12 & June 9, 2015 meetings)
Charlie Kelkenberg
Agricultural Rural Residential

Applicant requests a re-hearing of the following:

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:

Charles Kelkenberg is present and explained he wants to add 50' to the rear of the lots.

Three (3) neighbor notification forms are on file.

Mr. Mills referred to a survey dated May 1, 2008 which shows part of Lot 2, Section 12, Township 12, Range 6. It is clarified that this is the same request as at the previous meeting with the exception that Mr. Kelkenberg would like to add 50 feet to the rear lots. Charles Kelkenberg owns the property behind the two lots in question and he said he does not have a problem with adding 50'. It is clarified that his would not create an illegal subdivision.

Mr. Kelkenberg said by adding the 50' it brings the lots up to an acre. Instead of a half an acre variance it would be a .35 acre variance. It is clarified that the variance request has changed to: B.) a .35 variance to allow for a lot split with a total acreage of 1.0 acres, D.) a .35 variance to allow for a lot split with total acreage of 1.0 acres.

Mr. Kelkenberg drew the footprint of the proposed house on a copy of the survey, there is 38' and 39' of side-lot space. The house is 1800 square foot with a two-car garage. Mr. Mills said if the Board grants this variance would the applicant be amenable to a condition that the side yard setback be approximately 39' on each side. Mr. Kelkenberg said yes, within reason. After further discussion there is a compromise of 30' on each side.

Chairman Michnik asked if one-story buildings are proposed. Mr. Kelkenberg said he does not know at this point. Chairman Michnik asked if the applicant would be amenable to a condition that states only ranch-style homes could be built. Mr. Kelkenberg said there is a ranch on one side of the property and a two-story on the other side. He said it will most likely be a ranch. He currently has people interested in the property, one of which is proposing a ranch style home.

Mr. McNamara asked if adding 50' will have an impact on the commercial property on County Road, what are the setbacks to the buildings supposed to be? Mr. Callahan said from the industrial side it is 45', but there is a separation there already.

Mr. Mills asked if it would be a daylight basement, Mr. Kelkenberg said it would be a full basement. Mr. Mills asked if a condition that stated the home could be a ranch or not to exceed 2400 square feet in size would be acceptable to the applicant. Mr. Mills' concern is with the smaller lots, he does not want an overbearing house. Mr. Kelkenberg said he would be agreeable to that condition, for both lots. The setback of the proposed house must match existing setbacks in the area.

Mr. Kelkenberg will build both houses.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** appeal No. 6 under **Old Business** with the following conditions which apply to Building Lot 1 and Building Lot 2:

- 1.) The applicant agrees that the setback for the side yard of each proposed structure be at least 30 feet on each side.
- 2.) Only a ranch-style home or a two-story home not to exceed 2400 square feet be constructed.
- 3.) An additional 50 feet is to be added to the rear of each parcel.

The applicant has presented evidence and testimony by way of previous minutes and this evening's testimony that this is a unique situation in that the frontage has changed during the course of time they held the property. Deputy Town Attorney Steve Bengart clarified that lot 1 will be 134.35 x 50', lot 2 will be 133.89 x 50'.

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

MOTION CARRIED.

New Business

Appeal No. 1

Lucas James
Residential Single Family

Requests the Board of Appeals approve and grant a 14" variance to allow for a 54" foundation wall from center of road to center of lot at 4615 Thompson Road.

Appeal No. 1 is in variance to §229-23.

DISCUSSION:

There is one (1) neighbor notification form on file, a second form was mailed but the applicant has not received it back yet.

Lucas James is present and said the Board approved the house next door to his proposed house. The bedrock is high and there was an issue with water flowing into a house four houses down the road to the south so he does not want to dig into the bedrock at all. He would like a full 8 foot basement but if that is not feasible, he will lower it to 7 feet variance which is what his neighbor applied for. With the 8 foot basement he would adjust the siding and stone on the house to give it the same appearance as his neighbor's house next door. The siding would come down past the foundation so it will look the same as the house next door. Under the siding, the glass block windows will be 16" tall, under that will be about 8"-12", a maximum of 28 inches of foundation will be exposed.

Mrs. Burkard asked if this has any negative effect on the neighbors. Mr. James does not believe there will be any negative effects to the neighbors.

Mr. McNamara asked if the applicant has a house plan yet. The applicant answered yes, it has been submitted and is on file. Mr. McNamara asked if the footprint of the house could be decreased so that the side yard setback would be 15'. Mr. James said he could ask the architect to redo the plan.

It is clarified that the applicant is asking for a variance that is 6" more than his neighbor's variance request. Chairman Michnik voiced his concern with this saying that a previous variance approval in the Town caused a neighbor to sell their home because of the pitch of the water drainage. He would prefer the applicant stay at the 48", like his neighbor. The applicant does not believe that in his case the additional 6 inches will affect the drainage as it did with the previous approval. Mr. James does not think his variance request will have any change on the drainage. Chairman Michnik said his house will appear bigger. Mr. James said the proposed home looks like a single story, the master bedroom is on the second floor which utilizes the roof

line, there is not even a second story window on the front of the house. The building will be about 30 feet high. It may not even be higher than the neighbor's house. It is a unique design, as the master suite utilizes the attic space. The house will be about 3,000 square feet.

Mr. McNamara suggested a 15' setback on the north side of the house and 12.5' on the south side. Mr. James is willing to adjust the plans to these setbacks, although he would prefer the 15' setback be on the south side and 12.5' setback be on the north side.

Mr. Mills asked the applicant if he would rather have more square footage of the house with more of a setback on each side yard or a greater basement height. The applicant would sacrifice the 2.5' garage space on the south side of the building, he prefers the greater basement height. The front of the house is going to be stone.

ACTION:

Motion by Richard McNamara, seconded by Ryan Mills, to **approve** Appeal No. 1, for a 14" variance in foundation wall height with a modification on the side lot line on the south side making it a 15' side lot line, the north side lot line remains at 12.5'. All facades to be brought down at least 6" down.

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

MOTION CARRIED.

Appeal No. 2

Dan Singer
Residential Single Family

Requests the Board of Appeals approve and grant a variance for:

- 1.) A third accessory structure,
- 2.) Of 3,456 square feet.

Both requests apply to 5510 Old Goodrich Road.

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

DISCUSSION:

There are twelve (12) neighbor notification forms on file.

Dan Singer is present and stated that he would like to store his family's vehicle's and property maintenance equipment in the structure. It would be used for personal storage only.

Mrs. Burkard asked if the applicant will put a path to go back to the proposed structure, Mr. Singer said yes he will put a stone path leading from the south side of his house back to the structure, he may black top it in the future. He went on to explain that he is proposing a gable building, normal overhang, no patios and a single door. He would use a light gray color to match his house, dark gray roof. There will be an 18' overhead door and a man door. The building will be no larger than 48' x 60'.

It is clarified that the side setback for a structure wholly in the rear yard is 10'. Mr. Singer said the proposed location is about 14 feet away from the lot line. The only work he would do in the structure is change his own tires. The existing structure has a changing room for his pool and houses his riding lawn mower.

Mr. Mills asked what the landscaping plan is for the proposed structure. Mr. Singer said he would put in a 2' bed of landscaping all the way around the structure.

Mr. Singer goes on record saying he will not sell any cars from his home or this structure, there will be no retail/wholesale business from his house.

Mr. Singer commits to a 40' by 60' or 2400 square feet structure, nothing larger. There will be no second floor in the structure.

Mr. D'Amato said the property is unique in that the location of the proposed building cannot be easily seen.

The depth of the property is 658 feet deep from the center of the street. He has lived there for three (3) years.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** appeal No. 2 with the condition that the applicant agrees to not operate any business out of the property and that the structure will not be greater than 2400 square feet or 40' x 60'.

ON THE QUESTION:

The applicant has presented evidence and testimony that make this a unique parcel for this proposed structure. There is plenty of foliage around it and it is a deep parcel. It fits in with the character of the neighborhood as there are other similar sized structures on surrounding properties.

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

MOTION CARRIED.

Appeal No. 3

Jeffrey Schneider
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 17.9' variance to allow for a 6' front yard setback for the construction of a detached accessory structure located at 10428 Main Street.

Appeal No. 3 is in variance to §229-66 (existing principle structure setback 23.9').

DISCUSSION:

There are two (2) neighbor notifications on file.

Jeffrey Schneider is present and said he does not have a garage and would like to build one to help him and his wife through the winter months. Their driveway is currently on Hillcrest. The structure would be 26'

x 24' deep and he would like to build it a little higher to accommodate false dormers to match the house. It would be sided the same color as the house.

Mr. D'Amato asked if the applicant explored options of attaching the garage to the side of the house. Mr. Schneider said no that is not an option. His property ends at the hedgerow of Forsythia behind his shed. There is a shed on the vacant lot next to Mr. Schneider's property. Mr. Mills asked if the applicant would agree to remove the shed if the variance is granted. Mr. Schneider explained that is where he keeps his lawn equipment. He will put his two cars and his motorcycle in the proposed garage, there will be no room for lawn equipment in the new garage. Mr. D'Amato is concerned that the proposed structure will look extremely out of place. It is clarified that this is an allowed structure at the proposed location whether attached or detached because there currently is no garage, the variance is for the size of the setback of the structure. This is a corner lot.

Mrs. Burkard said it appears to be a sharp turn to enter the garage. Mr. Schneider said the driveway will be a 2-car wide driveway. He cannot put the garage further behind the house because he needs the clearance to back out and pull in without hitting the house. The garage will be at an angle just as the house is.

Mr. McNamara asked the applicant if he thought about turning the garage parallel with Hillcrest, keep the back corner of the garage where it is or maybe split the difference and have a 10 foot side setback. Right now the back right hand corner is over 12 feet. The applicant thinks his plan is more aesthetically pleasing and was thinking of the view from Main Street. The applicant would have to push it back approximately 5 feet to accommodate Mr. McNamara's suggestion.

Mr. Mills asked if the applicant thought of making it a front load garage facing Hillcrest, the applicant said he does not want the garage facing Hillcrest, he thinks it would look ugly. There is discussion back and forth between the Board members and drawing of various scenarios. Deputy Town Attorney Steven Bengart referred to a survey done by Ottney & Miller, submitted as part of the file dated May 14, 1993, FB# 64-28B, Job # 9845. One scenario was clarified: the variance request would be changed to an 11.4' variance to allow for a 12.5' setback.

Chairman Michnik agreed with Mr. McNamara's suggestion regarding turning the garage, which would provide more turn around. The applicant said he can turn the garage. Mr. D'Amato asked if the applicant is willing to decrease the size to 20' x 24', Mr. Schneider said that would be too small for what he needs. He intends to keep the existing shed on the property.

ACTION:

Motion by Richard McNamara, seconded by Patricia Burkard, to **approve** appeal No. 3 with the following change: to grant an 11.4' variance to allow for a 12.5' front yard setback for the construction of a detached accessory structure located at 10428 Main Street.

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

MOTION CARRIED.

Appeal No. 4

Edward R. Lamarca
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for a 167' front yard setback located at 10865 Howe Road.

Appeal No. 4 is in variance to §229-41(A).

DISCUSSION:

Edward Lamarca is present and stated that he is not currently the owner but has a formal contract on the property. This variance request is being conducted contingent on the purchase.

There are three (3) neighbor notification forms on file. One form is signed by the current owners of the property because they own adjacent property. Deputy Town Attorney Steven Bengart stated that the sellers are James W. Freiheit and Mary L. Freiheit of 10865 Howe Road and the address being purchased is on the south side of Howe Road located west of the house known as 10865 Howe Road. Deputy Town Attorney Steven Bengart said this is acceptable.

Mr. Lamarca referred to the aerial plan which shows the natural run-off that comes from the neighbor to the west going across the property to the east and it cuts through the front of the property, which would cause the house to be pushed back further. In order to have room for the house and the septic system he needs the front yard setback. The Wetlands are in the back of the property. The applicant and the builder, Charlie Kelkenberg, plotted out the land and they believe the proposed location is a good elevation for the best drainage. He is in the process of getting a soil bearing test done which will play into the top of foundation location.

Mr. Mills stated that a 167' setback is a large setback, he asked if it could be less. Mr. Lamarca said they don't know at this point, but his request is for the maximum. He is willing to move it forward and would prefer it that way, but does not want to lock himself into a lesser setback until he has more information. Deputy Town Attorney Steven Bengart asked if he would like to table the request, obtain more information and come back to the Board in 30 days. Mr. Lamarca said they need to close on the property and the purchase is contingent on where they want to build the house. He said if the Board denies the request he will not purchase the property.

Mr. Mills asked for details on the proposed home. Mr. Lamarca said it will be a single-story ranch style home between 1700 square feet and 2000 square feet. Mr. Mills said it is difficult for the Board members because the request is lacking information. Mr. Lamarca asked why this is such an issue if the neighboring properties don't have an issue with it. Mr. Mills explained that the Board is asked to look at various criteria set forth under Town Law §267. They are not only asked to look at the current neighbors but what the future holds for other neighbors and other people in the community. Mr. Lamarca said the answer to that is that the owner who has the property next door has no issue with the setback, the people on the other side who are developing property there, have no issue with it either. Chairman Michnik said the Board does not want to set a precedent for a 167' setback for future home buyers. Mr. Lamarca asked what the problem is with that. Chairman Michnik said the Town Code does not allow that size setback, it is not reasonable in the Town.

Mr. Mills said Mr. Lamarca has only provided speculative data. Mr. Lamarca said there is a natural run-off drain that he has to be behind. Mr. D'Amato asked how many feet from the street is the center of that swale. Mr. Lamarca does not know. He has nothing from an engineer, but he would guess that it is 80'

from the street, Mr. Kelkenberg agreed. Mr. Kelkenberg went on to say that it's always better to keep natural swales if at all possible. The soil bearing tests will tell where the water table is, which will help determine the location of the house and how much grading needs to be done.

Chairman Michnik voiced his concern regarding the water table, if it is high the basement will have to be brought up and a height variance would be needed. Mr. Lamarca said that is possible. Chairman Michnik said there are many unanswered questions regarding this request. The applicant would like to proceed with the setback request, he may not need another variance for any other issue that has been discussed. He feels the setback request can be resolved with the points he presented.

Mr. D'Amato referred to the aerial map and said all the houses in the area are setback about 75'-80'. The applicant is asking for double that. Mr. D'Amato asked why the applicant can't keep in line with existing setback lines. Some trees may need to be removed but Mr. D'Amato would rather see the applicant stay at the existing setback line. The applicant said no other property on the street has the issue of the water running along the front of the property, which is forcing the setback.

Deputy Town Attorney Steven Bengart and Mr. Lamarca step out of the meeting room for a discussion.

Deputy Town Attorney Steven Bengart explained there was a discussion off the record in which he and the applicant discussed whether the applicant feels he has provided enough information to the Board or if the applicant would be interested in tabling and coming back with additional information. Mr. Lamarca requested to be tabled.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills to **table** Appeal No. 4.

ON THE QUESTION:

Mr. McNamara suggested the applicant provide a survey showing the swale and measurements along with a septic system design. They would also like to have the soil bearing test results.

Mr. D'Amato suggested the applicant come back with a measurement of how far up he is willing to go.

It is clarified that the lot size is 340' x 600'.

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

MOTION CARRIED.

Mr. Lamarca asked to be put on the agenda for next month's meeting (August 9, 2016). Mr. Lamarca is asked to document any changes to the request and re-stake the property.

Appeal No. 5

Charles Kelkenberg
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for a 125' front yard setback located at 10620 Keller Road.

Appeal No. 5 is in variance to §229-41(A).

DISCUSSION:

Two (2) neighbor notification forms are on file, however there are no addresses on the forms.

Mr. Kelkenberg is present and said he is looking for a 125' front yard setback for a house at 10620 Keller Road. 10600 Keller Road is at 200'. The depth of this house is 58', at 125' setback that would put the back side of the house 15' ahead of the closest house.

Mrs. Burkard asked why the applicant wants it at the proposed location. Mr. Kelkenberg said his client thought it would be the best location for the home. The property falls as it goes back, there is a swale with natural drainage there and he would like to keep that swale intact. Another reason for the request is the grading which is due to the lay of the land.

Mr. Kelkenberg said the owners of 10630 Keller Road are aware that the house at 10620 will be at 125'. There will be landscaping put in to alleviate any issues with this.

It is clarified that the setback per the code is 45'-200'.

It is mentioned that the next request on the agenda is for a 250' front yard setback at 10630 Keller Road but is now being amended to 350'.

Mr. Kelkenberg said the setbacks vary in this area.

Mr. D'Amato said there is a setback line already established on the surrounding properties and he feels this needs to be maintained. He referenced the aerial that shows setbacks from 165'-200'. He does not see the need for the extreme setbacks the applicant is asking for.

Mr. Kelkenberg asked how the Board can deny his request when others have been approved. Mr. D'Amato said these are different times and different circumstances. It is clarified that the neighboring property was approved as an Open Development which is a different type of approval, it is not a setback variance.

Chairman Michnik voiced his concern with the "zig-zagging" of setbacks. He feels this is a huge variance request.

Richard Schott lives at 10600 Keller Road and said he is in favor of the request but is not in favor of not receiving notice of it.

Mr. McNamara asked how far back the swale is off the road. It is unclear but Mr. Kelkenberg guessed at around 230', it runs to the east and towards the creek. Mr. McNamara asked if the applicant is willing to move it back further. Mr. Kelkenberg said the cost involved with that change is not feasible.

Mr. D'Amato suggested both requests be tabled.

Pamela Schott is present and said ideally it would be nice if the houses were even, but she is sure it will be a lovely home. Her husband spoke with Mr. Kelkenberg and to the perspective neighbors and they are satisfied it won't look like a storage heap.

Deputy Town Attorney Steven Bengart suggested that if the Board tables the appeal that they get something in writing from 10630 Keller Road indicating they understand the other one is at 125'.

Deputy Town Attorney Steven Bengart said for the record: The Schott's would not have a problem with the speculation of putting up a barn there at a future date and they have no objection to the 125' setback, although ideally 200' would be preferred. As far as the next agenda item being a setback request of 350', Mr. Schott also has a concern about setting a precedent of "zig-zagging" setbacks. He said the Building Department was pretty strict when he built his house six (6) years ago.

Mr. D'Amato suggested Appeal No. 5 and Appeal No. 6 be tabled and the applicant go back to the drawing board.

Mr. Kelkenberg asked if the Board is saying that the 2 new houses should be built at 200' setback. Mr. D'Amato said if there is evidence presented for a reasonable setback at the next meeting or if evidence is presented showing the need to set the homes up that close or that far back, they look at all information.

The applicant requested the Board table the request for 10620 Keller Road.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills to **table** Appeal No. 5.

ON THE QUESTION:

Mr. D'Amato said the applicant is to come back with documentation verifying that the further up or further back setback is needed and how they came to those conclusions. Re-stake anything necessary for the Board to see. A neighbor notification form 10630 is also required showing they are aware of the request.

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

MOTION CARRIED.

Appeal No. 6

Charles Kelkenberg
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for a 250' front yard setback located at 10630 Keller Road.

Appeal No. 6 is in variance to §229-41(A).

DISCUSSION:

Mr. Kelkenberg said the request should be for a 350' front yard setback. He said that with the larger distance, you get away from the "looking in your neighbor's backyard" perspective. Looking at the homes in the immediate area, this makes sense to him.

Chairman Michnik called attention to the fact that there is an approved Open Development Area so it does not apply in this circumstance. The Open Development was approved after a house was built at 400' back. When looking at the overview of the entire area, the potential buyers wanted the house to be tucked back into the section of woods that is there, their vision was to put a driveway in with landscaping.

Mr. Kelkenberg said the clients were made aware of the setbacks in the area and a possible denial of the 350' setback.

Mr. Kelkenberg stated he would prefer the house be on the front side of the swale.

Mrs. Burkard asked if the neighbor to the east is selling his property. Mr. Kelkenberg said yes, there is a lot there that is under contract. Mrs. Burkard asked if he knows where they want to put their house. Mr. Kelkenberg said preferably at 125'.

Chairman Michnik would like to keep the neighborhood similar, there is the one exception, but most of the homes are in line with 165' to 200'.

Mr. Kelkenberg requested the Board table the request for 10630 Keller Road so he can confer with the property owners.

ACTION:

Motion by Ryan Mill, second by Daniel Michnik, to **table** Appeal No. 6.

ON THE QUESTION:

Deputy Town Attorney Steven Bengart said if the property at 10640 closes, he recommended getting a Neighbor Notification form from them with regard to 10630 Keller Road.

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

MOTION CARRIED.

Meeting adjourned at 9:09 pm.

Carolyn Delgato
Senior Clerk Typist