

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday July 9, 2013
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
Jonathan Hickey	Gregory Thrun

Town Officials present:

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

Other interested parties present:

Jeff VanMarter	David A. Webster II
Gary B. Augustine	Peter J. Buchbinder
Joel Cristall	Michael Harrington
Daniel P. Ghirsig	Kevin Dossett
Timothy J. Berger	

Jim Callahan introduced Jonathan Bleuer as the new Junior Planner. Jonathan was welcomed by the Board.

Preliminary Agenda Items

Jeff VanMarter Agricultural Rural Residential	Requests the Board of Appeals approve and grant a re-hearing for a variance heard on August 10, 2004 for 10425 Keller Road.
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DISCUSSION:

Chairman Michnik noted that in order to re-open the hearing, it must be a unanimous vote by the Board.

It is clarified that, after much discussion, this same request to re-open the hearing was denied by the Board at a previous meeting. At that meeting it was simply a request to the Board, not a public hearing. Since that meeting it became apparent that the applicant wanted to be heard by the Board so the request to re-open the hearing was placed on this agenda.

Jeff VanMarter and Karen Stendardi are present. Mr. VanMarter explained that the initial ruling was granted for one house due to a privacy issue. The neighbor has now put up a privacy fence, eliminating the privacy issue. Karen Stendardi said they own 38 acres and they want to put their house in the back of

the property. They put in a pond last summer and have a beautiful setting back there. They want to sell their primary residence and build a new home overlooking the pond. That is why they need a variance to allow them to put a second house on the property.

Mr. Mills asked if there is any other way to achieve the second house on the property without a variance. Can the applicant acquire additional land? They are unable to build to the east because there are wetlands there. He referred to documents showing the location of the wetlands, the documents are on file. Mr. VanMarter said a home could be built up front on Keller Road to the east and the only other place for a home is behind his current home due to the wetlands. Mr. Mills asked if there is only room for one more home to be built on the property. Mr. VanMarter said no, there are 37 acres back there, but he confirmed that he has no plans to put any more homes back there.

Mr. Hickey asked for clarification that Mr. VanMarter has owned the property consistently since 2004. Mr. VanMarter said that is correct. Mr. Hickey clarified that the vote this evening is to re-open the hearing, not a vote on the actual variance.

Mrs. Burkard asked what the applicant plans to do with the existing house. Mr. VanMarter said he will sell it off with three (3) acres of land.

Chairman Michnik referred to the previous hearing held in 2004 where Mr. VanMarter agreed to certain conditions when he accepted the variance. Mr. VanMarter said that information is correct, however, after that hearing he was told to move the driveway to leave 44' along the right of way so if anyone wanted to build a house back on the property they could so he moved the driveway 25' to the left to make sure there was enough room to let another driveway get back there. Chairman Michnik asked Mr. VanMarter who told him to move his driveway. Mr. VanMarter said he didn't know but it was probably someone from the Building Department or the Town. Chairman Michnik asked if there is a record of this request, Mr. VanMarter said he has no clue. He said the driveway was all done, then someone told him and he agreed to move the driveway before it was permanent. There is no record of the driveway request in the file. Ms. Stendardi said the situation from 2004 has changed because the privacy issue has been resolved by the new homeowner who put up a fence.

Mr. VanMarter said he was told that if he gave 150' of frontage he could put a house back there. Mr. Callahan clarified that if Mr. VanMarter had 150' of frontage he could sell it as a lot. Chairman Michnik noted that the 2004 approval was for one (1) house to be built on the entire parcel. According to the minutes the design for the whole property was for one house and Mr. VanMarter accepted the conditions. Mr. VanMarter said this is just like any other property where it gets broken up and sold off. Chairman Michnik said other pieces of property don't have a variance granted with conditions to keep it from being split. Mr. VanMarter said there was a misunderstanding; he didn't understand that he couldn't sell off a lot. Chairman Michnik said there is specific information in the minutes from the 2004 hearing. Mr. VanMarter said then it is useless land and there should be no taxes on it.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve and grant** a re-hearing for a variance that was initially heard on August 10, 2004 for property located at 10425 Keller Road on the merits.

Jonathan Hickey Aye
 David D'Amato Nay
 Daniel Michnik Nay

Patricia Burkard Aye
 Ryan Mills Aye

MOTION FAILED.

David Webster
 Agricultural Rural Residential

Requests the Board of Appeals approve and grant a re-hearing for a variance heard on January 8, 2013 for 5935 Strickler Road.

DISCUSSION:

Chairman Michnik noted that in order to re-open the hearing, it must be a unanimous vote by the Board.

David Webster is present.

Mr. Hickey asked the applicant to clarify what he was granted and what he wants. Mr. Webster said he was granted 22' x 30', which he understood to mean 22' to the south by 30' to the depth of his property. Once he pulled the lot line he realized that within his 7' to 8' variance was the original 30' x 30' and he thought he could go as deep as he wanted into the back yard. His plan is to build a two-car garage. He heats his home with oil and would like to keep the oil drum in the garage. He will also store a total of five (5) bicycles in the garage and his truck. He has owned the property for three (3) years. There were no neighbor issues from the previous hearing; there are neighbor notification forms on file. Chairman Michnik read from the previous minutes that stated the original request was for 30' x 30, however Mr. Webster agreed to 30' x 24' and now Mr. Webster wants 30' x 34', which is larger than originally requested. Mr. Webster said the addition 4' is a bump-out for the oil drum. Mr. Webster drew what he is looking to do on a piece of paper in order to clarify it for the Board; the drawing has become part of the record and is on file.

Mrs. Burkard asked what the allowable square footage is for a garage without a variance. Mr. Callahan said in that zone it is unlimited. Mr. Webster said the pie shape of the lot is what stops him from putting an outbuilding up. Mrs. Burkard noted that the variance is really for the distance from the side lot rather than the square footage, Mr. Callahan confirmed this. Which means the actual variance request is the same as originally requested, Mr. Webster just wants to go deeper into his lot. He apologized for the confusion.

Mr. D'Amato wanted to clarify that Mr. Webster originally came to the Board asking for 30' x 30' and it was agreed to 30' x 24' and now he wants 30' x 34'.

Mr. Mills asked if the 30' width could be reduced any further thereby making the setback for the side yard less in exchange for more depth. One of the original conditions was restricting the size. Mr. Mills asked if the width of the garage can be decreased to 28' therefore creating a 9' side yard setback closer to being in conformity with the law. He asked if the garage could be 28' x 36'; a drawing showing this dimension is on file. It is clarified that the setback goes by the foundation, not the soffit line. Mr. Webster would like to think about it.

Chairman Michnik reminded everyone that the vote this evening is for a re-hearing only. If the vote is unanimous allowing the request to be re-opened Mr. Webster will need to come back with new drawings.

Mr. Mills asked for clarification on what size garage Mr. Webster will want if the request is re-opened. Mr. Webster said he would ask for 30' x 30', which was his original plan.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve and grant** a re-hearing in the same manner it was stated in his original request for a variance heard on January 8, 2013 for 5935 Strickler Road.

ON THE QUESTION:

Mr. Hickey explained the reason for his decision was based on Mr. Webster's explanation. There are unique circumstances present in light of the change of season and lack of objective information about what the property revealed. This is close in time to the applicant's original request. Mr. Hickey believes the applicant should have an opportunity to be re-heard on the merits in light of Mr. Webster's presentation this evening.

Mr. Mills said the foundation for his second to the motion is the fact that the original setback request remains the same. A change in the size of the structure is being requested, and being in an agricultural zone, it can be sized however the owner wants without a variance.

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

MOTION CARRIED.

New Business

Appeal No.1

Gary Augustine
Residential Single Family

Requests the Board of Appeals approve and grant a 472 square foot variance to allow for a proposed 672 square foot detached garage at 10060 Pineledge Drive East.

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

DISCUSSION:

Neighbor notification forms are on file.

Gary Augustine is present and explained that he would like to build a detached garage on his property. It will be 28' wide by 24' long. He discussed his plan with the Planning Department and Paul Gross at the Building Department. He would like to park his vehicle inside the garage and store lawn equipment as well.

Mr. D'Amato asked if Mr. Augustine explored other options like attaching the garage. With one exception, all other homes in the area have attached garages. Mr. Augustine said he did look at attaching the garage but there are trees that would have to be removed and his wife did not want to do that. The

layout looks better as a detached garage rather than an attached because of the driveway will go straight into it. Mr. D'Amato stated that this would be the only house, except for one, in the neighborhood with this type of set up; it would change the character of the houses around Mr. Augustine's. Cost is also a factor. Mr. D'Amato asked if the garage would look the same as the house. Mr. Augustine said it would have the same exact brick and siding as the house, same roofline, too. He spoke with his neighbor who said the structure might look better with windows on the side that faces the neighbor, so Mr. Augustine will put four (4) windows in. Mr. D'Amato asked if the applicant explored options for a breezeway. Mr. Augustine said yes, but it would have to be connected to the house which would be a major expense to cut into the house.

Ms. Burkard asked if the existing shed would remain. Mr. Augustine said yes he would like to keep it, he understands that he is allowed two (2) detached structures.

The Augustine's have lived there for 14 years and have no plans of moving out.

Mr. Mills asked if Mr. Augustine could accommodate any less size in his request. Mr. Augustine said he could but he does not want to build it smaller and then be dissatisfied with it. He owns a pick-up truck, a small back hoe with a trailer, a 4-wheeler and a few lawn mowers that he would like to store in the garage. His son also owns a car, which might also be stored in the garage. Mr. Mills said the existing garage is a two-car. Mr. Augustine said you can only fit two (2) small cars in it; he cannot fit his wife's car and his pick-up truck comfortably in the existing garage and there is no room for any storage on either side. The total acreage of his property is one and a quarter.

Chairman Michnik asked why the property was not staked. Mr. Augustine said it has been staked for three weeks. Mr. Thrun visited the property and did not see stakes. Chairman Michnik also visited the site and did not see any markings. Mr. D'Amato saw one white stake. It is explained to the applicant that as part of the application it is a requirement that property is staked in order for the Board members to have a visual of what type of request it is.

ACTION:

Motion by Patricia Burkard, seconded by Ryan Mills, to **table** Appeal No. 1 to allow time for the applicant to properly stake the property so the Board members can re-visit the site and obtain a visual of what the applicant is requesting.

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

MOTION CARRIED.

Appeal No.2

Peter Buchbinder
Residential Single Family

Requests the Board of Appeals approve and grant a 340 square foot variance to allow for a proposed 540 square foot pool house at 8955 Williams Court.

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

DISCUSSION:

Two (2) neighbor notification forms are on file.

Peter Buchbinder is present and explained that he is putting a pool in and the proposed pool house would house a bathroom/changing area and some other space for entertaining.

Mr. D'Amato asked whose idea it was to pour the foundation already. Mr. Buchbinder said it was a mistake on his part. After talking with his neighbor who also has a pool house he didn't think he needed a variance. Once he talked to the Building Department and found out he needed a variance he stopped construction immediately. Mr. D'Amato said if the request is denied it will be an issue. Mr. Buchbinder understands. Mr. D'Amato asked if there is an alternative plan. Mr. Buchbinder said no and went on to explain that his neighbor has a pool house that is a bit larger than what he is proposing and he can't see it from his property, so he doesn't think the neighbor will see his.

Mrs. Burkard asked if a building permit was obtained. Mr. Buchbinder said he has to be granted the variance before he can obtain the permit. The proposal includes a ten (10) foot overhang for seating.

Mr. Hickey noted that the overhang is added to the footprint of the structure. He then asked if the materials will match the garage and the house. Mr. Buchbinder said yes and explained there will be landscaping around the proposed property.

Mr. Mills asked where the pool will be located. Mr. Buchbinder said it is 20 feet off the porch. The pool will be a 20' x 40' rectangular pool. The proposed pool house is centered on the pool.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 2, as written.

ON THE QUESTION:

Mr. Hickey pointed out for the record that the footprint for the pool house itself is 343 square feet, and if the covered patio area is added it totals 540 square feet which is the 340 square foot request for the variance. He said a 143 foot increase is not significant in light of the surrounding homes in the area.

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

MOTION CARRIED.

Appeal No.3

Joel Cristall, II
Residential Single Family

Requests the Board of Appeals approve and grant a 5.11' variance to allow the construction of a pool in the front yard setback area on a corner lot at 9027 Stonebriar Drive.

Appeal No. 3 is in variance to §196-3 and §229-52(A).

DISCUSSION:

Joel Cristall, II is present and stated that he would like to put in a 16' x 32' kidney shaped pool. Based on the configuration of his yard, which has approximately 25 trees in the back, he would like to put the pool in the far back end of the property, then he only has to remove two (2) trees. The pool construction will have a three (3) foot concrete lip around it, then one (1) foot of garden, then a fence, then a three (3) foot dirt berm. They will maintain the integrity of the bushes that already exist. This plan doubles the level of privacy from the street.

Mrs. Burkard visited the site and saw that there is no other place to locate the pool, she is glad that the pool will not be seen from the street.

Mr. Hickey asked for clarification on what type of variance request this is. Mr. Callahan explained that this is an area variance because it is the setback in the front yard.

Mr. Mills asked if the applicant had an objection to the Board making a landscaping condition on approving the variance. Mr. Cristall has no objections.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 3 with the condition that the applicant create a berm with shrubs as seen in the location depicted on the Amherst Land Surveying Services survey dated July 15th, 2005 with hand drawn berm and shrubs on it.

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

MOTION CARRIED.

Appeal No. 4

John Conciardo
Residential Single Family

Requests the Board of Appeals approve and grant a 5' variance to allow for the construction of an attached enclosed patio in the rear yard of a principle building at 5442 Center Pine Lane. The enclosed patio will extend 5' from an existing in ground pool.

Appeal No. 4 is in variance to §196-3.

DISCUSSION:

Michael Harrington is present and is representing John Conciardo who is out of town. Chairman Michnik noted that there is an e-mail from Mr. Conciardo giving his permission for Michael Harrington to represent him at this meeting.

Mr. Harrington explained that there is an addition on the home that the applicant would like to add doors to, which would constitute it as living space, which requires a variance. The addition was just recently

built; it was permitted and approved, so the structure is in place, Mr. Conciardo just wants to add doors to it.

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

Mr. Callahan explained that as soon as doors are put on this structure it changes the status to living space which also changes the setback requirement to 10’.

Mr. Harrington said the doors are accordion-type, so the whole unit opens up.

Mr. Hickey said 5’ is pretty close to the pool, he is concerned that someone who is unfamiliar with the house may walk out of the addition and fall into the pool. He asked for specifications on the accordion-type door. Mr. Harrington showed the Board a magazine advertisement of LaCantina Doors, which is the exact brand they will use. The page is on file. Mr. Hickey asked if there will be any other safety protocols in place between the proposed doors and the pool. Mr. Harrington said no.

Mr. D’Amato asked what the measurement is for the doors that span across. Mr. Harrington said 20’, they close in one direction.

Mrs. Burkard asked if there will be some type of safety locks on the doors. Mr. Callahan explained that self-latching doors are required by law in association with a pool. Mr. Harrington said the applicant’s intent is to have the doors open all the time except in inclement weather.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, 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.

Appeal No. 5

Dan and Diandra Ghirsig
Agricultural Floodzone

Requests the Board of Appeals approve and grant a variance to allow for a 6’ fence in overall height to be constructed in the front yard of a primary residence at 8075 Salt Road.

Appeal No. 5 is in variance to §101-3.

DISCUSSION:

Dan Ghirsig is present and noted that he has worked hard on the landscaping and a fence would be a deterrent for the deer. He has a Great Dane and would like to keep him in the front yard if possible. He has a big circle driveway in the front of his house; people use it as a turnaround at all hours of the night, so it would be helpful to have a restriction on that.

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

Mr. Mills asked for details on the fence. Mr. Ghirsig said it will be a black metal aluminum 6' fence with a lot of see through area. Two (2) documents are viewed, one dated 8-20-2010 from Ameristar and one dated 4-22-2009 from Ameristar. Mr. Ghirsig said the quote is actually from April 2013. There is also a picture of the gate that will go on the front. The documents are not on file. The gate will be motorized at a later date. The gate will go across the front length of the property.

Mr. Ghirsig said, besides obtaining the neighbor notification forms for the neighbors on either side of his property he also spoke with the neighbor across the street who had no issue with his request, that neighbor has lived at that property for 20 years. The Ghirsigs built their home four (4) years ago.

The reason for the 6' height request is so the Great Dane doesn't jump the fence. There is a 6' high fence in the rear yard and the dog has not jumped that. The dog does not go to the sides of the property.

Chairman Michnik asked if the height could vary on the fence, he suggested dropping down to 4' in height on either side of driveway. That would provide a better visual for vehicles that need to pull in and out of the driveway like visitors or emergency vehicles. Chairman Michnik is concerned with the fence running across the entire frontage of the property blocking such a well landscaped piece of property. Mrs. Ghirsig said the fence is very see-through, she does not think the height will make a difference as far as a visual barrier; it's not a privacy fence. Mr. Mills referred to the Ameristar documents and found the distance between slats on the fence is 3" and 15/16's. Mr. Mills said even if the distance was 6" between slats the Great Dane still couldn't get through. Mr. Ghirsig said he would have no problem adjusting the distance between slats to make them wider. Mrs. Burkard would rather see the wider distance between slats, too.

Mr. Mills asked what the time constraints are on the applicant. He suggested tabling the request to allow the applicant time to research how wide he can go between slats on the fence. Mr. Ghirsig said he wants to get this done as soon as possible but sees no reason he cannot go back to the fence installer and obtain some specs with wider spacing. He agreed to tabling the proposal.

ACTION:

Motion by Ryan Mills, seconded by Jonathan Hickey, to **table** Appeal No. 5, to allow the applicant time to obtain specs on the fencing he is requesting.

ON THE QUESTION:

The applicant understands what the Board is looking for.

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

MOTION CARRIED.

Appeal No. 6

Scott and Virginia Zgoda
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 168 square foot variance to allow for a 1,128 square foot attached garage in the side yard of an existing home.
- 2.) A 7.5' variance to allow for a 5' side yard setback to a primary residence for the construction of a new attached garage.

Both requests apply to the construction of a new attached garage at 6411 Bridlewood Drive South.

Appeal No. 6 is in variance to §229-55(D) and §229-52.

DISCUSSION:

Kevin Dossett is representing Scott Zgoda. Mr. Dossett said the request is accurate except that the applicant recently asked what the possibility would be for a second story to be added to the new attached garage. The applicant wants to put a bedroom above the proposed garage. The first floor of the garage would be used for storage. The first thought was a shed in the backyard but that would be offensive given it would be right on the lake that is back there. There would be no plumbing in the proposed garage.

There are two (2) neighbor notification forms on file. Chairman Michnik asked if these neighbors were notified of the second story request. Mr. Dossett does not know that because the applicant took care of the notification forms. Mr. Callahan noted that the variance does not concern the second story.

The property was not staked. Mr. D'Amato suggested tabling the request to allow the applicant time to square things away, perhaps the owners could be present at the next meeting, too. Mr. Dossett agreed.

ACTION:

Motion by David D'Amato, seconded by Jonathan Hickey, to **table** Appeal No. 6.

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

MOTION CARRIED.

Chairman Michnik provided Mr. Dossett with blank neighbor notification forms so he can advise the neighbors of the second story request and have them sign the form advising as such. He also told Mr. Dossett to clearly and immediately stake the property.

Appeal No. 7

Shakeel Ahmad
Planned Unit Residential Development (PURD)

Requests the Board of Appeals approve and grant a variance to allow for the placement of a detached structure (generator) within the front yard space of a primary residence at 5957 Killarney Manor.

Note: the generator is currently installed at the property.

Appeal No. 7 is in variance to §229-55(D).

DISCUSSION:

Timothy J. Berger is representing Shakeel Ahmad. A letter from the applicant giving his permission for Mr. Berger to act as his agent is on file.

There are three neighbor notification forms on file.

Mr. Berger said his son is the contractor for a remodeling job for Dr. Ahmad. His son thought the electrician was applying for the generator and the electrician thought the contractor was applying for it. The generator was installed and Mr. Berger's son received a call from the Town saying he didn't apply for an application for a generator. It was a miscommunication. Mr. Berger's son is out of Town, so he told him he would handle it. It is unfortunate that it was put in without a permit and the manufacturers specifications say that the unit has to go within 50' of the gas meter. Mr. Berger works for a home builder and he never thought that the left side of the house would be considered the front yard because of the way it faces Curry Drive. The homeowner is planning on putting landscaping around it to mask it. There was absolutely no intent of trying to sneak this by without obtaining proper permits.

Mrs. Burkard asked who the electrician is. Mr. Berger said Warning Electric. Mrs. Burkard said the generator really could not have been located anywhere else on the property. Mr. Berger agreed and explained there is a huge concrete patio on the back of the house and the other side of the house is way too far away from the gas meter. Local code states the generator has to be 10' from the primary structure.

Mr. Mills asked who remodeled the basement. Mr. Berger said Versatile Works. Mr. Mills asked if the applicant would agree to a condition, if approved, that landscaping be installed, especially around the side that faces the neighbor across the street. Mr. Berger said he knows his client will agree. This was the first generator his son has installed in the Town of Clarence.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 7 with the condition that the applicant provides landscaping around the unit. The type of landscaping will be left to the discretion of the applicant.

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

MOTION CARRIED.

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on June 11, 2103, as written.

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

MOTION CARRIED.

Chairman Michnik thanked the Board for all their hard work regarding last month's meeting. He also thanked Jim Callahan and Steve Bengart for providing valuable information to the Board which aides in their decision making. Chairman Michnik reminded all members that they are required to take four (4) hours of continuing education per year. Deputy Town Attorney Steve Bengart said he reached out and tried to get answers from last month's meeting in terms of trying to settle it. At this point, there is nothing new to report.

Meeting adjourned at 8:51 p.m.

Carolyn Delgato
Senior Clerk Typist