

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday August 13, 2013
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
Jonathan Hickey	Gregory Thrun

Town Officials present:

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

Other interested parties present:

Gary B. Augustine	Kevin Dossett
Daniel Ghirsig	Amy Webster
Dave Webster	Melinda Glose
Stephen Glose	John Powers
Cindy Powers	Scott Zgoda

Old Business

Appeal No. 1 (from July 2013 meeting)

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:

Mr. Augustine clearly staked the property reflecting the variance request. He talked with the neighbor across the street who has no objection to the request. Three (3) neighbor notification forms are on file.

Mr. Hickey asked the applicant if he gave any consideration to reducing the size of the proposed structure. His primary concern is the significant nature of the request. Mr. Augustine said he could not build a smaller structure because he has a car and a backhoe. A 28’ by 24’ is the smallest size he could get away with and still store what he wants inside the garage. He confirmed that attaching the garage would be too costly.

Mrs. Burkard asked if a breezeway would work. She is concerned with what it will look like with a large building that close to the house. Mr. Augustine said you would have to bring everything up and tie it in if a breezeway was built, it is a huge expense. The building materials will match the house.

Mr. Mills said it is a large variance. He confirmed with Mr. Augustine that the proposed structure will match the house exactly in terms of building materials.

Chairman Michnik asked for clarification on what Mr. Augustine meant by “bringing it up”. Mr. Augustine said he would have to bring the back part of the yard up so the roof line of the proposed structure matches the roof line of the house. Chairman Michnik asked if the roof line on the proposed detached garage will match the roof line of the house, and if so, it would be able to tie in. Mr. Augustine said the roof lines will match but the garage will be set back. Chairman Michnik said the two structures could still be tied together. Mr. Augustine said that would add \$15,000 to the cost, however, he has not obtained an estimate. Mr. Augustine said there are 2 or 3 detached garages in his neighborhood. Chairman Michnik agreed with Mrs. Burkard and said it needs something there to tie it together so it looks like it is part of the building because it is a substantial variance. Mr. Augustine said his neighbors have houses that are set up the way they like, it is not a stamped concrete, each house has to be the same and they aren’t. That’s why he is looking at this plan; he doesn’t want to spend a lot more money just to make it be a stamped part of his subdivision. Chairman Michnik clarified that the Board is not asking for a stamped plan, the variance request is large. There is already a free-standing building on the property; Chairman Michnik asked if that building will be removed. Mr. Augustine said he could remove that shed, but doesn’t see why he should have to because he is allowed by law to have two buildings in his yard. Mr. Augustine said if he put a 16’ by 24’ garage in that location it would look totally ridiculous. Mr. Augustine confirmed that he will need to put in a concrete pad for the proposed structure. Chairman Michnik said that will have to be level with the existing grade of the driveway. Mr. D’Amato asked what the height of the proposed structure is. Deputy Town Attorney Steve Bengart said the height cannot exceed 16’.

ACTION:

Motion by David D’Amato, seconded by Jonathan Hickey, to **approve** Appeal No. under Old Business, as written with the condition that the maximum height of the structure is 16’ per the Law.

ON THE QUESTION:

Mr. Hickey said his concern is the significance in nature of the request. Mr. Augustine’s explanation and the submission dated June 14, 2013 show Mr. Hickey that there is no other way for him to achieve a reasonable benefit feasibly. The unique nature of his property and its layout makes this a perfectly acceptable addition to the community. Although Mr. Hickey thinks it is a large request, there are unique circumstances that have been explained that would warrant the appeal being granted. Mr. D’Amato amended his motion to include the condition that landscaping be added to the east side of the structure. Mr. Hickey agreed.

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

MOTION CARRIED.

Appeal No. 6 (from July 2013 meeting)

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:

A representative for the applicant is present.

Chairman Michnik noted that the applicant was to obtain neighbor notification forms advising the neighbors of the request for a second floor. Those notifications are on file. Chairman Michnik said the representative was asked to clearly mark the property, it was not marked when he visited the site again. Other members said the property was not marked either when they visited the site again. Mr. D'Amato asked if the representative used a cone, he said yes and Mr. D'Amato said the cone was in the garage. The representative said he also marked some bricks. Those bricks were seen under the basketball net. The representative said there are kids and its right in the middle of the walkway and he doesn't have much control over that. Chairman Michnik asked if the applicant is staying with a single or a double. The representative said a double. The representative said the homeowner goes out of Town once a month on a Tuesday so he couldn't attend the meeting this evening.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **table** Appeal No. 6 under Old Business, until the property can be clearly marked. Architectural drawings should be submitted if available.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart said if the representative has the authority to speak for the homeowner then he needs to present a written document to that effect. He also noted that the property must be clearly staked.

Mr. Mills referred to the minutes from the July 9, 2013 meeting where there was discussion that the property was not staked and 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, the representative at that meeting agreed. Mr. Mills said the Board cannot mandate that the owner be present but they did suggest it.

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

MOTION CARRIED.

Appeal No. 5 (from July 2013 meeting)

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:

Mr. Ghirsig was present and explained he spoke with his neighbors within a half a mile radius of his home and reported that none of them had any objection to his request. He submitted a list of signatures from those neighbors. Mr. Ghirsig said the Board suggested 6" between slats of the proposed fence, he researched this and found that 6" is not an available option, however 4" is. The fence companies advised the Ghirsig's that 6" spacing is not available because a child or a deer could get stuck in the fence. Mr. Ghirsig has a letter from the fence installer which says he (the installer) has had 20 years experience of installing fences, and as an avid hunter, he can attest to the fact that deer would prefer to go through a fence rather than over it, unless the height is attainable less than 6'. He strongly recommended the Ghirsig's install a fence that is of standard spacing, 4", with a height of at least 6' to keep deer and other dogs and stray animals out of their yard as well as children inside. The fence he is recommending is open and 90% viewable. The documentation was not signed by the fence installer, although he did provide his name and number in case anyone wanted to contact him.

Mr. Mills asked for the reason why a 5' fence would not work. Mr. Ghirsig said the dog would jump over it; a higher fence would be deer preventative and better for security reasons. A higher fence may be a deterrent if someone was looking to scale the fence. There was a recent break-in a few doors down from the Ghirsig's.

Mr. Hickey said Mr. Ghirsig addressed all the issues that were brought forth at the last meeting.

Mr. Mills asked for confirmation that the fence will be black aluminum; Mr. Ghirsig said yes the material will be black aluminum. Mr. Mills said if that was made a condition as part of the motion, is that acceptable to Mr. Ghirsig. Mr. Ghirsig said yes.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 5 under Old Business, as written, with the condition that the fence be aluminum material and have a 4" space between bars and the fence will not exceed 6' in overall height.

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

MOTION CARRIED.

Appeal No. 4 (from January 2013 meeting)

Dave Webster
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 7' variance to allow for an 8' side yard setback to a primary residence for the construction of a new attached garage addition at 5935 Strickler Road.

Appeal No. 4 is in variance to § 229-41(B)(2).

DISCUSSION:

Dave and Amy Webster are present. Mr. Webster explained he staked the property where he wants to put the garage. The request is for 30' x 30', 30' x 34' is not needed. When he agreed to the 22' x 30' at a previous meeting he didn't realize he limited himself and was not allowed to go further back in his yard. The 30' x 30' request is what he needs for space, he has two cars and will do some wood shop work inside the garage.

Chairman Michnik said the last time the applicant was before the Board he was requesting a bump-out for his oil tank. Mr. Webster said that is how he heats his home, with fuel oil. He confirmed that the bump-out was going to be about 4' x 6', but he wants to stay within the 30' x 30'. Chairman Michnik asked why the applicant wants the tank inside the garage. Mr. Webster said for deep freezes, then you don't have to put the supplement into the fuel, it's better for the fuel if you don't use a supplement. If the 4' x 6' area was to be added for the tank, Chairman Michnik asked where that would be located. Mr. Webster said it would be in the southeast corner of what he is proposing; he referred to a site plan that is on file. Chairman Michnik asked if the cost of adding the 4' x 6' section to the addition would balance out the cost of the additive for the fuel. Mr. Webster said yes it would be more cost effective to add the 4' x 6' section to house the tank; it would also help to keep his new 250 gallon tank looking nicer.

Mr. Hickey asked Mr. Webster if there is any other feasible way to do what he wants other than having it 8' from the property line. Mr. Webster said he is asking for the 30' south towards his neighbor's house because he has to put stairs to get into his house and that pushes each vehicle further south. He would like enough room to have the car doors open on both sides of the vehicle so his wife and the children won't be tripping over themselves getting out of the car. Mr. Hickey said it appears there is an accessibility issue and a safety issue present. Mr. Webster agreed.

ACTION:

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **approve** Appeal No. 4, under Old Business, as written with the condition that the 4' x 6' aspect of the structure as explained by Mr. Webster is built.

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

MOTION CARRIED.

New Business

Appeal No. 1

Melinda and Stephen Glose
Residential Single Family

Requests the Board of Appeals approve and grant:

1. A 7.5' variance to allow for a 5' side yard setback for an accessory structure.
2. A 144 square foot variance to allow for a detached accessory structure (garage) totaling 864 square feet.

Both requests apply to 8630 Clarence Center Road.

Appeal No. 1 is in variance to §229-52(4)(B) and §229-55(D).

DISCUSSION:

Melinda and Stephen Glose are present. Mrs. Glose explained their property currently has a 24' x 24' detached garage that is in bad shape and sits on the property line. They want to tear it down and put up a stable structure. The garage would be used for storage of vehicles, lawn maintenance equipment and a snow blower.

Chairman Michnik said there are two neighbor notification forms on file.

Mr. Hickey asked if there is anyway the applicant can decrease the size of the structure and still accomplish what they are looking to do. Mrs. Glose said they are hoping not to have to put another structure up in the future. They bought the house 2 years ago and knew the original garage would be redone. They want to avoid the need for a small storage shed. The materials of the proposed structure will match the existing home. The applicant's chose a specific contractor for this structure because they will also use them in the future for a new roof, so everything will tie in together and match. Mr. Hickey asked if the applicant can come any closer to the 12.5' setback requirement. Mrs. Glose said the existing structure is right on the property line, the front corner specifically. So the back of the structure would be further away from the property line because of the angle of the property line. There is also an easement on the property. In order to meet the side yard setback of 12.5' the patio that is at the back of the house would have to be carved out because the proposed structure would actually sit on the stamped patio. The driveway would have to sweep 12.5' around the house in order to gain access with a vehicle, the structure would have to be moved significantly further back on the property to accommodate that sweep. Mr. Glose said it would cost more to move the structure back on the property and it would not be aesthetically pleasing. Mr. Hickey said he thinks Mr. Glose is probably right. Mrs. Glose said an 8' setback would be an issue, but a 6' setback might not be.

Mrs. Glose said the driveway is just inside the property line.

Mr. D'Amato said he is concerned with the size and asked the applicants if there is any way to decrease it. He suggested 24' x 30'. Mrs. Glose said the structure would not touch their neighbor's backyard. The size of the structure was figured on how it would suit the Glose's best, they have two vehicles, a scooter, a bicycle, tools and yard equipment. The yard would be cluttered if they couldn't store these items in a garage. They have a basement but it is full.

Mr. Mills asked for clarification on the applicant's acceptance of a 6.5' variance to allow for a 6' side yard setback. Mr. and Mrs. Glose said they could do that. Mr. Mills asked if the applicant could go from 36' in depth of the proposed structure to 34' or 32'. He is concerned with the long view of the neighbors on Shamrock Lane. Mr. Glose said he could accommodate 2' and make the depth of the structure 34', his wife agreed.

Chairman Michnik asked about the fence that is next to the garage at the property line. Mrs. Glose thinks that the fence is owned by the neighbor but it is on the Glose's property. Chairman Michnik asked if landscaping could be installed at the back of the structure where the door is proposed. Mrs. Glose said the plan on landscaping the entire yard. Chairman Michnik suggested landscaping that is no less than three feet (3') high just to break up the view of the structure for the neighbors. Mr. Glose understands. The stairs going to the loft of the proposed garage have been deleted from the plan; a ladder will be used instead. The proposed back door will be in the same position as the existing back door. Chairman Michnik asked if the applicant could install landscaping near the fence line of the neighbor who has the chain link fence. Mrs. Glose said they are planning on putting up a privacy fence to enclose the entire yard, hopefully by this October. Mr. and Mrs. Glose said it would be acceptable if a condition was put on the approval that a privacy fence is to be installed within one year of the approval.

Deputy Town Attorney Steve Bengart said the applicant is aware of the easement on the property and noted that if the request is granted and the applicant puts up another garage the Town of Clarence is not guaranteeing that the applicant won't be violating that drainage easement. He wants to make sure the applicant's understand this. Somebody may bring litigation to enforce the rights under that easement and that would not involve the Town of Clarence. The Town of Clarence is not saying the applicant has the right to put the garage on the easement. The Glose's understand this and know that it is their responsibility.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **approve** Appeal No. 1 with the following conditions:

- The first request is reduced to a 6.5' variance to allow for a 6' side yard setback for an accessory structure.
- The property is to be fenced with a 6' high privacy fence in the rear yard within one year of the building permit being issued for the accessory structure.
- The second request is changed to a 96 square foot variance to allow for an 816 square foot detached accessory structure, which is a measurement of 24' x 34'.

ON THE QUESTION:

Deputy Town Attorney Steve Bengart asked if the changes to the request are acceptable to the applicants. Mr. and Mrs. Glose said the changes are acceptable.

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

MOTION CARRIED.

Appeal No. 2

John and Cynthia Powers
Residential Single Family

Requests the Board of Appeals approve and grant a 2.5' variance to allow for a 10' side yard setback for the construction of an addition to the principle structure at 5293 Ashwood Court.

Appeal No. 2 is in variance to §229-52(4)(B).

DISCUSSION:

John and Cynthia Powers are present. Mrs. Powers explained that they are adding a first floor master bedroom and bath onto their home, as it is even with the variance the bedroom is only 13' wide. They cannot go any narrower and be able to fit the furniture in and walk around the room.

Two (2) neighbor notification forms are on file.

Mr. Powers explained that the front corner of the house is 9.9' off the lotline; this is how the house was situated when they purchased it.

Mr. Mills asked if the materials will be consistent with the materials on the house, which consists of vinyl siding. The Powers' said yes it will match.

Mr. Hickey asked if the bedroom could be made smaller. Mrs. Powers said if it was smaller it would not accommodate the furniture. Mr. Hickey noted that the variance as requested is the only feasible way this project can be done. Mrs. Powers agreed.

Mr. Powers clarified that the house was originally a three-bedroom home but one of the existing bedrooms was converted into a den, so with this addition the house will be a three-bedroom home again. They have owned the house for about three years.

It is clarified that the master bedroom will be 13' x 19', but the home sits on a pie shaped lot so it is only the first 6' of the proposed addition that need the variance.

Chairman Michnik asked if any trees will need to be trimmed to put the addition in. Mrs. Powers said at this point they are hoping no, they want to keep the trees. They plan on having Tony Lombardo do the construction.

Mr. Mills asked if the applicant looked at other options when considering this addition. Mrs. Powers said yes, they moved the plan around quite a bit and this was the best they could come up with. Mr. Powers said there is more room on the other side of the house but that is where the driveway is so the addition would have had to go on the other side of the driveway. Mr. Mills asked about converting the existing garage and building another. Mrs. Powers said that would have been more costly. Plus, it would have been off the kitchen, Mr. Powers is not sure that would work for a master bedroom.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, 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. 6 (from July 2013 meeting)

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:

Mr. Zgoda is present and clarified that he discussed the two-story garage with his neighbors. His contractor represented him at this meeting and at a previous meeting. The contractor told Mr. Zgoda that it was not necessary for Mr. Zgoda to be in attendance at this meeting, so he didn't come. The contractor contacted Mr. Zgoda and told him that the request was tabled this evening because there were answers that the contractor could not answer and the Board members wanted to discuss the proposal with Mr. Zgoda. Mr. Zgoda took a chance and drove to Town Hall in hopes of discussing the project with the Board members.

Deputy Town Attorney Steve Bengart asked if the hearing should be re-opened now and heard this evening versus at a later date. There were two issues. One issue was, for the second time, the property was not staked. Apparently the property was marked but the markings were moved and the Board members are not comfortable making a decision because they can't see where the garage is going. The other issue was they wanted to hear from the property owner or documentation should be submitted that allows the contractor to have complete authority. Mr. Zgoda said the property has been marked with four (4) cones and some bricks. It has been up and down because he has four (4) children that play there. Town Attorney Steve suggested spray painting the area because it has to be there for the entire Board to view. Mr. Zgoda said it has been spray painted but it grew and was cut. If it is critical that the property is posted and marked at all times, then that's what he will do.

Mr. Zgoda's request will be re-heard at the September 10, 2013 Zoning Board of Appeals meeting. There are no further drawings at this point.

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

Jonathan Hickey Aye
David D'Amato Aye
Daniel Michnik Aye

Patricia Burkard Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting adjourned at 8:25 p.m.

Carolyn Delgato
Senior Clerk Typist