

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday August 9, 2016
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:02 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:

Ed LaMarca	Ann LaMarca	Charles Kelkenberg
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Motion by David D'Amato, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 14, 2016, as written.

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

MOTION CARRIED.

Old Business

Appeal No. 1

Edward R. LaMarca
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a variance to allow for a 140' front yard setback located at 10865 Howe Road.

Appeal No. 1 is in variance to §229-41(A).

*Previous request for 167' front yard setback.

DISCUSSION:

Edward LaMarca is present and explained that the people who signed the Neighbor Notification forms agreed to the original 167' setback. Mr. LaMarca and his developer looked at the property again and are now proposing 140' with the idea of still staying behind that run-off. The neighbor to the west has the run off coming across his property and it appears that the Town is maintaining that run-off. It seems the Town

has an interest in keeping that run-off in a natural state. Mr. LaMarca feels his hardship is in trying to keep the house away from that run-off. Some other properties on the road are narrower but the houses are setback considerably, one is setback at 210', one at 176', and another at 148'. He does not feel his request is out of line.

Ann LaMarca said they originally wanted to go back 167' because they wanted to stay well away from the run-off and wanted the leeway to put the house there in case they wanted to or ran into some problem. They actually wanted the house forward more, but then the builder said they could put the septic system to the south side and they could move the whole house forward, so they did which they thought would be satisfactory to this Board.

Mr. Mills asked what is preventing the applicant from moving up to 120', it doesn't appear they would be near the natural run-off. Mr. LaMarca said he does not know what the extent of the flow will be from the run-off, he hopes 140' will be enough to handle it. To go closer makes him nervous.

It is clarified that the sale of the property is contingent on the approval of this variance. Deputy Town Attorney Steven Bengart said there is no issue with the applicant not owning the property yet.

If the request was denied, Mr. LaMarca said he would consider not taking it based on the current contractual agreement with the owner. He has no intention of splitting the property in the future, the house will be located in the middle of the property.

It is clarified that if the vote does not go the way the applicant wishes, he can come back before the Board with a different application.

ACTION:

Motion by Richard McNamara, seconded by Daniel Michnik, to **approve** Appeal No. 1, as written, with the condition that there will be no second building lot split from this property in the future.

ON THE QUESTION:

The approval is based on the information that was provided for the reasoning of asking 140', which is because of the drainage/water situation. The approval is also based on the uniqueness and the location of the property.

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

MOTION CARRIED.

Appeal No. 6 (from July 2016 Meeting)

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:

Charles Kelkenberg is present and explained that originally he was looking for a 350' setback, since the last meeting he was able to convince the buyers of the property that 250' was a better place to be. This would not put the front of the house behind the house to the west. Mr. Kelkenberg got letters from property owners on both sides indicating they know what is going on. Those two (2) neighbor notification forms are on file.

It is noted that the established setback line is 200', thus the applicant is requesting a 50' variance.

Chairman Michnik reads an e-mail from Kristin Willet noting the Kelkenberg Builders is acting as their agent in a matter related to establishing a setback variance with the Tow of Clarence for 10630 Keller Road. A copy of the e-mail is on file.

Mr. Kelkenberg said another reason for the request is due to the topography on the site. Between 250'-300' is the high point of the property. After 300' it drops off considerably to a swale which ties into the other property to the west and there is another property further west that ties into the swale as well. Mr. Mills asked Mr. Kelkenberg if he will interrupt the swale if he builds in the 200'-250' range. The property drops off at 200' towards the road. All the property pitches to the west. The further he moves forward the more pronounced the drop-off will become. Mr. Mills asked what is problematic about putting the house at the 200' and forward range. Mr. Kelkenberg said it is because of the deep layout of the house.

Chairman Michnik asked the applicant if it is acceptable to his client if the Board said to keep it at 190'-210'. Mr. Kelkenberg said they are adamant about the setback they are requesting. They do not want to go any closer to the road; they want to be at 250'. His clients are not present because they live in New Jersey, although they are both originally from Clarence. They are aware of the variance issues.

Mr. McNamara asked how much it drops from 250' to 200'. Mr. Kelkenberg said about 30". Mr. McNamara asked how deep the house is, Mr. Kelkenberg said about 80'. He would be at least 48" out of the ground in the front of the house if he put it at 200'.

Mr. Kelkenberg said it is possible to put it at 200' but in his client's minds they are planning for their children to grow up here and do things like drive their bikes on a long driveway.

Mr. D'Amato asked what the clients will do if the request is denied. Mr. Kelkenberg said his clients would probably pursue the setback.

Chairman Michnik asked the applicant if it would affect the back that much if the setback was at 230'. Mr. Kelkenberg said he thinks it will be acceptable to his clients if the setback is at 230.

Mrs. Burkard said the driveway will still be a long driveway because the garage is set behind the house and the driveway leads to the garage.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** a 230' front yard setback at 10630 Keller Road. The applicant has provided testimony showing information considering topography and drainage that seems to necessitate a further setback, along with the client's preference to be further back. The drainage falls through some setback into the natural swale and topography of the property.

Richard McNamara Aye
David D'Amato Aye
Daniel Michnik Aye

Patricia Burkard Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting Adjourned at 7:37 pm

Carolyn Delgato
Senior Clerk Typist