

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday February 14, 2012
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Arthur Henning
Ryan Mills
Patricia Burkard

Vice-Chairman Daniel Michnik
David D'Amato
Jonathan Hickey

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Peter DiCostanzo
Councilman Robert Geiger
Councilman Bernard Kolber

Other interested parties present:

James Rinaldi
Dennis Hussak
Kathy Derose

John Vaccaro
David Derose

Appeal No. 1

James Rinaldi
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 1.5' variance to allow for the installation of a generator 8.5' from the side lot line within the side yard setback of a principal structure at 9756 Cobblestone Drive. The generator is currently installed on the property; the applicant is proposing a relocation of the existing generator with this variance.

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

DISCUSSION:

Dr. James Rinaldi is present and explained that the generator was installed at his previous home. He moved to Clarence two (2) years ago and brought the generator with him to install at this new home. The electrician/contractor was installing the generator when a Town Inspector came by and advised him a variance was needed because it was 1.5' too close to the lot line. Dr. Rinaldi did not know a permit was needed; he left that up to his electrician. He will put shrubs around the relocated generator if the variance is granted.

Dr. Rinaldi explained that he would have preferred the generator behind the house but that location would not have worked; the proposed location works best as it is the closest to the utility lines.

Neighbor notification forms are on file.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written with the condition that landscaping be installed to buffer the unit.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

John Vaccaro
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

- 1.) A .16 acre variance to allow for the creation of a residential building lot having 1.175 acres.
- 2.) A .16 acre variance to allow for the lessening of an existing residential building lot to 1.175 acres.

Both requests are to allow for the creation of one (1) additional building lot at 7566 Goodrich Road.

Appeal No. 2 is in variance to § 229-29 (B)(1).

DISCUSSION:

John Vaccaro is present. Dennis Hussak is present; he owns the property directly north of Mr. Vaccaro's property.

Mr. Vaccaro would like to split the property, sell a piece of it and build on the other half. Mr. Vaccaro tried to get in touch with the neighbor of the property who lives in Canada, but to no avail. His other neighbor, Mr. Hussak, is present. Mr. Hussak said he has no problem with what Mr. Vaccaro is proposing but he is concerned with where the property is in the floodplain. Mr. Hussak has lived there for 25 years and has been through six (6) floods. He wants to make sure that if a house is built on Mr. Vaccaro's property it will not displace more water onto his property. Deputy Town Attorney Steve Bengart said when the applicant reaches the building permit process the drainage issues will be addressed. Mr. Hussak asked if he will have an opportunity to talk to the Building Department about the drainage issue at that time. Deputy Town Attorney Bengart said yes. Mr. Callahan said this proposal was forwarded to the Town Engineering Department for comment and it was identified that it is not in the Black Creek Flood study, but there are drainage issues on a portion of the property. Chairman Henning read the letter from the Town Engineer's Office: "The proposed residential building lot does not impact compliance with Local Law 03-2000 Flood Damage Prevention because it is not located in the conveyance area of the Black Creek density floodway. All proposed construction and/or filling operations on the subject lot must be in accordance with all requirements set forth in Local Law 03-2000 and will be reviewed for compliance prior to issuance of a building permit. Building restrictions and

conditions will apply for compliance with Local Law 03-2000 since the proposed structure will be located within the floodplain. A floodplain development permit is required prior to any land disturbance on the property.” The letter is on file.

Mr. Vaccaro has owned the property for six (6) years. There is no contract with a potential buyer to purchase the land. He brought in fill so he could bring the house that he wants to build up a bit. The driveway is street level because he wants to put the garage underneath and the house a little higher. If the variance is denied, Mr. Vaccaro would still build there, it would just take a little longer.

Mr. Mills asked if the applicant explored purchasing property from adjacent neighbors to bring his parcel into compliance. Mr. Vaccaro said he did not try to purchase adjacent property; he is going through a divorce and just wants to split the property.

Mr. Michnik said this is a hardship case that Mr. Vaccaro needs to pursue so he can continue living, Mr. Vaccaro said that is correct.

ACTION:

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 2 with the information provided by the Town Engineering Department for flood control and water control. The property transfer for one of the lots must be completed within 18 months.

Patricia Burkard	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 3

Katherine J. Derosé
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 578’ variance to allow for a front yard setback of 650’ for the construction of a new primary residence at 9650 Lapp Road (SBL #30.00-2-3.111).

Appeal No. 3 is in variance to § 229-41(A).

DISCUSSION:

David and Kathy Derosé are present. Kathy Derosé explained that they are under a due diligence clause, they are looking at this piece of property to relocate. She had an initial walk through with Earth Dimensions in which they stated a worst case scenario and a best case scenario, that being 10 acres of unregulated usable space versus 40. Given the map and the outlined drier portions of the property, there is a small sliver of options as to where the house can be located. They have not spent money on the full delineation; they just did the initial walk through. There is only one (1) acre on the south side of the easement that may be available to put the house.

Mrs. Burkard asked if the applicant could put the house any closer to the road. Mrs. Derosé said she does not know that, the Earth Dimensions report indicated the best place to put the house is on the highest,

driest, best soil and is in the front section of the property. Deputy Town Attorney Steve Bengart clarified that the document being referred to is a preliminary wetland map delineation, project code W2B12, it is requested that the applicant provide a copy of the report to the Planning and Zoning office so it may become a permanent part of the file. The property has been on the market for at least two (2) years.

There is one neighbor notification form on file.

Mrs. Derosé noted that there are two (2) other houses east on Lapp Road that are setback the same distance or further than what she is requesting.

Mrs. Derosé explained that based on the initial walk through Earth Dimensions is suggesting that half of the property is wetlands. Mr. Callahan noted that the Town Engineer has provided a preliminary review that indicated the request will not impact the density floodzone; the applicant would have to comply with drainage, grading and floodplain development requirements when they build.

Mr. Mills asked what size house the applicant plans to build. Mrs. Derosé said 2500-3000 square feet. There will also be a barn. There will be no business operated on the property. Mr. Mills said without the study there is no way to tell if the house could go closer to Lapp Road. Mrs. Derosé said if the Board told them they couldn't build back as far as they want, they would probably pass on the purchase of the parcel.

Mr. Michnik asked if the applicant planned on selling any lots off the front of the parcel. Mrs. Derosé will not sell any lots off the front unless it is to one of her children and the Board approves it; however, it is not her intention to break up the lot.

Chairman Henning read a memo from the Town's Civil Engineer Kathryn Vergo dated February 13, 2012: "The proposed requested setback distance of 650 feet does not impact compliance with Local Law 03-2000 Flood Damage Prevention. The proposed building appears located outside of the 100 year floodplain. Elevations are required at time of building permit application to verify. Please be advised that there appears to be floodplain as well as federal wetlands on the parcel. Any work in or near these areas may require Floodplain Development and USACOE permits." The letter is on file.

Mr. Mills said if the Board conditions the approval on not being split off would that be acceptable to the applicant. Mr. Derosé said they would only split it off for one of their children; they would not sell it to anyone outside of their family. It would be more than a year before construction began on a home for Mr. and Mrs. Derosé on the parcel.

ACTION:

Motion by Ryan Mills to **approve** Appeal No. 3 with the condition that none of the acreage be used to split off to individual building lots.

Mrs. Derosé does not own the property yet, so she could not agree to this condition. The owner of the property needs to be present and agree to this condition. Mrs. Derosé only has permission from the owner to ask for the variance. Deputy Town Attorney said perhaps the request should be tabled so that the owner can be present at the next meeting to give permission for the conditions.

Ryan Mills withdraws his motion.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 3 so the owner of the property can be present at the next meeting or to allow time for the applicant to acquire a detailed consent from the owner.

ON THE QUESTION:

Mrs. Derosé explained she has 30 days due diligence, if they are not approved for a setback they will not buy the parcel. Mr. Mills asked if the applicant could ask for additional time.

Councilman Kolber asked if the applicant could have the setback with the clause in place but if the lots are sold the setback variance would be null and void. Deputy Town Attorney Steve Bengart said he does not think this could be done.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Arthur Henning, seconded by David D'Amato, to **approve** the minutes of the meeting held on January 10, 2012, as written with the following amendment:

-Councilman Robert Geiger was in attendance at the January 10, 2012.

Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Meeting adjourned at 7:33 p.m.

Carolyn Delgato
Senior Clerk Typist