

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday February 9, 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
Gregory Thrun	Richard McNamara

Town Officials present:

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

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on January 12, 2016, as written.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

William Tuyn	Robert Brenner	Brett Morgan
Ferdinando Cimato	Carmelo Cimato	Salvatore DiNatale
Sharon Barker	Paul Barker	Henry Jurek
David Thompson	Barbara Thompson	

The Zoning Board of Appeals Committee entered into Attorney/Client Privilege session at 7:01 p.m. The Attorney/Client Privilege session ended and the Zoning Board of Appeals meeting opened.

New Business

Appeal No. 1

Forbes Capretto Homes
Residential Single Family

Requests the Board of Appeals approve and grant a 2.5' variance to allow for a 10' side yard setback for a proposed residential single family home located at 5348 Glenview Drive.

Appeal No. 1 is in variance to §229-52(B).

DISCUSSION:

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

William Tuyn from Forbes Capretto Homes is present and explained the house will have a side-load garage and needs a bit more space on the front corner of the lot, the lot lines converge to the front, the lot is on a curve so the lot lines get closer as you get to the front of the lot. At the back of the lot the variance would be .5' and at the front it is 2.5'. The house is very typical in Clarence and in the Spaulding Green development. Mr. Tuyn said the lots on either side of this lot will have a similar house built on it because Forbes Capretto will build those homes as well.

Mr. D'Amato asked how many homes are currently built in the development. Mr. Tuyn does not know the number. Mr. D'Amato asked if there is another option for this lot, Mr. Tuyn does not think is because of the side-load garage. Mr. D'Amato sees this as a possible problem if other lots don't configure, he does not want to set a precedent and change the whole development plan. Mr. Tuyn said he thinks other people will choose smaller houses to fit on smaller lots. He said the entire Spaulding Green development is an open space overlay project, so some of the lots were smaller because of that.

Mr. Tuyn estimated that the square footage of the house would be 3500 square feet. Forbes Capretto Homes has all three lots are under contract with Dominic Piestrak. They could go with a different design but this is the one they think will sell the best in this neighborhood. They are asking for the variance for the middle lot so that they impact themselves, not other builders.

Chairman Michnik asked if there is a possibility the house could be moved toward the other lot line. Mr. Tuyn said it could but it impacts the pad for the side-load garage. Chairman Michnik agrees with Mr. D'Amato and does not want to set a precedent for the neighborhood. He suggested the applicant make the house smaller to fit the lot.

Mr. Thrun noted that if this house cannot be built on any other lot due to its size, and this is the model house, then the applicant is setting up for failure because potential buyers will all want that house and it won't fit on any of the properties. Mr. Tuyn is hoping that is not the case. Mr. Thrun said a model should be built that will fit on all the lots.

Mr. Tuyn has ten (10) properties. They are currently building on a lot that is bigger and the house fits. The proposed model home will not fit on the other lots, however they have a lot of different models. People in Clarence like the side-load garage. It is not the applicant's intention to repeat this house over and over again in the neighborhood, they have a portfolio with other style/size houses that they hope this proposed house sells. They do not intend to be asking for repeated variances. He does not think people driving through the neighborhood will be able to tell that the house is closer to the property line than it should be, the appearance, if the variance is granted, will not go to destroy the character of Clarence. It will enhance Clarence because you will have the look that people desire.

Mr. Mills asked Mr. Tuyn if he is representing to the Board that he will not be back in front of the Board for any other Spaulding Green lots. Mr. Tuyn said at this point in time it is not their intention to keep coming back before the Zoning Board of Appeals. Mr. Mills pointed out that there are other phases that have larger lots in this development. Mr. Tuyn said they have ten (10) lots in this phase, they are not going to wait for another phase. Chairman Michnik asked if the applicant could make the house smaller. Mr. Tuyn said yes, but Mr. Capretto decided this is the house that he needs to build in order to sell others.

ACTION:

Motion by Gregory Thrun to **deny** Appeal No. 1 under New Business based on the fact that there is no one else to say aye or nay to the request because the applicant owns the property adjacent to the property in question. The proposed house barely fits on this lot, the next house built will not fit on the next lot.

There is no second to the motion.

Motion by David D'Amato to **table** Appeal No. 1 under New Business to provide the applicant the opportunity to find out if a smaller house can be built on the lot.

There is no second to the motion.

ON THE QUESTION:

Mr. Tuyn said the overall dimensions of the proposed house including the garage is 2640 square feet, however it will be smaller than that because the figure includes features like a front porch so there will roughly be 2200 square feet of living area. The house is 60' wide on a lot that is 113' wide at the rear. Mr. Mills referred to the site plan that is on file and asked if the driveway is larger because it is a side-load garage. Mr. Tuyn said it is a typical size for a side-load but it is wider than a front-load driveway. The larger pad for the side-load garage is coming closer to the property line. The actual structure of the home is not any closer to the property line. If the proposed home was a front-load the actual structure would be closer to the structure of the other home.

Motion by Ryan Mills, seconded by Gregory Thrun, to **deny** Appeal No. 1 under New Business. The applicant has not provided evidence and testimony regarding any hardship of this particular parcel. The setback would seem to impact the adjacent lots going forward. The variance can be viewed as substantial given the size of the setback.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Old Business**Appeal No. 1 (from June 2015)**

Upstate Cellular Network
Restricted Business

Requests the Board of Appeals approve and grant:

- 1) A 20' variance to allow for a 120' tall commercial cellular tower.
- 2) A 46' variance to allow for a 74' setback to lot line.

Both requests apply to 7377 Transit Road.

Appeal No. 1 is in variance to §173-4(D) and §173-5(C)(3)(a).

DISCUSSION:

Robert Brenner from the Law Firm Nixon Peabody is present on behalf of Verizon Wireless. Mr. Brenner noted that the SEQRA process needed to be completed for this project, Verizon Wireless was more than will to accommodate the process to make sure the application was complete. The Board also requested

additional documents which the applicant submitted directly to the Town Attorney. Mr. Brenner said the reason he sent the documents to the Town Attorney is because the Public Hearing closed on November 10 and he did not think it was appropriate to send further correspondence to the Board due to the fact that the Public Hearing was closed. A letter was received on December 11 in which the DEC indicated that no significant adverse environmental impacts were associated with this project and they (the DEC) had no issue with the Town taking Lead Agency Status for purposes of SEQRA, the letter is on file. Mr. Brenner said the reason they are requesting a variance is because there is an existing telecommunications tower at the site and both the Town Code and Federal Law favor and promote co-location. Under the New York Public Utility Standard the applicant believes that they have satisfied their burden in connection with the variance and they ask that the same motion be put on the table that was at the November 10 meeting, prior to the request to adjourn the project in order to accommodate the SEQRA process. Mr. Brenner said they have continued to send out public notices via certified mail to a list of neighbors, throughout this process. That list was provided by the Town.

Deputy Town Attorney noted that the public hearing is closed so there will be no questions asked. It is now appropriate for the Zoning Board of Appeals members to make a determination.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **issue** a Negative Declaration for Appeal No. 1 (from June 2015), under Old Business. As Lead Agency under SEQRA there does not appear to be any significant environmental impact. Receipt of a structural analysis report is noted. There does appear to be evidence submitted that the applicant has permission to seek this variance.

ON THE QUESTION:

There is correspondence from Anthony Cimato dated February 4, 2016 and received by the Town on February 8, 2016. The letter is on file.

Gregory Thrun	Nay	Patricia Burkard	Aye
David D'Amato	Nay	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 1 (from June 2015), under Old Business, as written. There has been evidence and testimony in the record regarding co-location being the optimum result given the facts and the nature of this request. The approval is based upon the testimony, facts and evidence received from all interested parties.

Gregory Thrun	Nay	Patricia Burkard	Aye
David D'Amato	Nay	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 1 (from January 2016)

Sharon Barker
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow up to a 250' front yard setback for the construction of a single family residence located at 9860 Greiner Road.

Appeal No. 1 is in variance to §229-52(A).

DISCUSSION:

Chairman Michnik thanked the applicant for marking the property.

Sharon Barker is present and explained she looked at Greiner Road, Goodrich Road and Kraus Road within the vicinity and printed a report to show the differences, she said it ranges from 66' to 360'. She also submitted topographic print outs from the Erie County mapping program. The report and the print outs are on file. Ms. Barker said the proposed location of the house is so they can save trees on the site, they will also add trees.

Mr. Callahan noted that under SEQRA this is an action that is identified as a local Type I because of the demolition of a structure prior to 1950. Supporting documentation is on file and there is a recommendation from the Historic Preservation Commission that this will not create a significant environmental impact. The Board's action should be to issue a Negative Declaration on the demolition of a structure built prior to 1950, prior to taking the action on the variance if that is what the Board is so inclined to do.

Ms. Barker said the parcel is two (2) acres in size, 550'-570' in length. There are no plans for the structure yet, however they would like to build a 3500-4000 square foot ranch style structure. Ms. Barker said she received updated approvals from the two adjacent neighbors.

Chairman Michnik asked how soon the applicant is looking to start construction if this is approved. Ms. Barker said they have not worked with an architect yet. The property is 170' wide at the front and 165' wide at the back.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, as Lead Agency to **issue** a Negative Declaration under SEQRA and that there is no significant environmental impact as a result of Appeal No. 1 (from January 2016) under Old Business.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 1 (from January 2016) under Old Business, as written.

ON THE QUESTION:

Mr. Thrun said based on the evidence that was presented of the variances of other homes on major thoroughfares throughout Clarence. The homeowner has done her due diligence to show that she is asking for a variance that is in line with other properties along major thoroughfares and with the impact that she is trying to add more trees to make in character with the rest of Clarence along this thoroughfare.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 5 (from January 2016)

David Thompson
Residential Single Family

Requests the Board of Appeals approve and grant an 840 square foot variance to allow for the construction of a 1,040 square foot detached accessory structure located in the rear yard of 9265 Roll Road.

Appeal No. 5 is in variance to §229-55(H).

DISCUSSION:

David Thompson is present and explained that at the last meeting a neighbor voiced some concerns. Mr. Thompson sent that neighbor a letter and met with her to discuss it. The letter is on file. Mr. Thompson referred to Exhibit A which is an aerial view of the applicant's property and the two adjoining properties on either side. Mr. Thompson outlined his property on the exhibit, the neighbor's (Ms. Yousey's) barn is to the applicant's right and sits in front of her (Ms. Yousey's) house. The house was an old horse stall that was converted to a single family home. If Mr. Thompson puts his garage back any further than what is proposed he will impede his neighbor's view of the open area in the back of her property. Mr. Thompson also met with Mat, the neighbor to the east, who had drainage concerns. It is Mr. Thompson's testimony that both of his neighbors are now satisfied with his proposed location of the structure. Mr. Thompson submitted two (2) photos that show the stakes for locating the accessory structure. He explained that the rear of his garage would be to the front of her house. Her living quarters are in the back of her house, so it is not obstructing any of her view. He is requesting this variance because he has a couple of collector cars and a lawn maintenance tractor/equipment that he wants to store in the garage. The two regular use vehicles that he owns will be stored in the two-car garage that is attached to the house. The colors of the accessory structure will match the house. It will be a steel building and the garage door will be identical to the garage door on the house.

Chairman Michnik said at the last meeting he suggested the applicant take the accessory structure all the way back to the "L" of the property. Mr. Thompson said Ms. Yousey did not like that suggestion at all. She has a covered patio at the back of her residence, she entertains all the time and does not want to look at a structure back there. She also had concerns about the evergreens that are planted on a berm next to her house but on Mr. Thompson's property, she does not want them destroyed.

ACTION:

Motion by Gregory Thrun, seconded by Ryan Mills, to **approve** Appeal No. 5 (from January 2016) under Old Business, as written. The applicant has done his due diligence working with his neighbors. The color of the structure must be the same as the siding on the house.

ON THE QUESTION:

The applicant has provided testimony that the lot size is approximately 2.75 acres, it is a large parcel. It is situated in such a manner as to not have any impact or minimal impact on adjacent property owners. The applicant has agreed to aesthetic accommodations so the structure fits in with the principle residence.

Gregory Thrun	Aye	Patricia Burkard	Nay
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Nay		

MOTION CARRIED.

Meeting adjourned at 8:00 p.m.

Carolyn Delgato
Senior Clerk Typist