

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday March 12, 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
David D'Amato

Vice-Chairman Ryan Mills
Jonathan Hickey

Zoning Board of Appeals member absent: Patricia Burkard

Town Officials present:

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

Other interested parties present:

Jason Toth
Douglas Cipollone
Michele Braun
Gregory Thrun

Brandon Houck
Michael Metzger
Richard McNamara
Larry Wolfe

Old Business

Appeal No. 4

Jason Toth
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a 6' fence in overall height to be constructed in the front yard of the primary residence (west of home near northern property line) at 4265 Harris Hill Road.

Appeal No. 4 is in variance to § 101-3 (C).

DISCUSSION:

Mr. Toth is present and explained that Deputy Town Attorney Steve Bengart received information from Erie County in regards to the right-of-way. Deputy Town Attorney Steve Bengart said Mr. Toth was asked to obtain clarification on the right-of-way with a DOT representative. Mr. Toth has done this and Deputy Town Attorney Steve Bengart was "copied" on all the e-mail correspondence from the DOT. The correspondence indicates that the DOT is willing to say that what the map shows is the right-of-way. If Mr. Toth is comfortable then whatever this Board chooses to do, Deputy Town Attorney Steve Bengart thinks will work. He does not think a definitive answer on how many feet from the center line of Harris Hill Road out can be obtained. Mr. Toth read from the e-mail, "This being said it is also not a function or

practice of Real Property Tax Services to determine house locations. So the proximity of the house to said ROW cannot be verified by this office. This is a function of the Professional Land Surveyor, and a survey. A recent one is provided with the information.” A copy of this e-mail is on file.

Chairman Michnik asked if this variance is granted and something happens in the future will the Town be held liable, Deputy Town Attorney Steve Bengart no. Mr. Toth said, for the record, he will be held liable and he holds the Town harmless.

Mr. Mills said the height of the fence being tapered down as it extends towards Harris Hill Road was discussed at the last meeting, he asked Mr. Toth if he considered this. Mr. Toth said he measured it 20' from the property line, he thought that would be reasonable. At that 20' mark the fence would be 4' high; there would be 2' of concrete then 2' of fence. The fence will be wood. The remaining portion of the fence will be 4' high which set atop the 2' concrete base.

Mr. Toth wants to put up a fence that appeals to look of the neighborhood, there are other similar fences in the area that have the wrought iron fence and concrete piers. There will be a 14"-1½' footer pinned to the bedrock then a 2' by 1' crash wall.

Mr. Michnik asked about the stake with the orange tape on it that he saw on the property. Mr. Toth said that is approximately the starting point of the fence.

Mr. Mills said he is concerned with the aesthetics of the concrete pillars and along the base. Mr. Toth said there will be stone on the concrete pillars and a tinted veneer of some sort, probably a Stucco, will be used for the base.

The applicant will obtain a copy of a Hold Harmless Agreement from the Deputy Town Attorney's Office.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 4 under old business as written, with the following conditions:

- 1.) The first 20' from the property line on Harris Hill Road east towards the applicant's house the height of the fence will be 4'.
- 2.) With respect to any Right-of-Way issues the applicant agrees to take full responsibility for any liability issues that may arise, he holds harmless the Town of Clarence.

Jonathan Hickey	Aye	David D'Amato	Nay
Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED.

New Business

Appeal No. 1

Don Lavocat
Agricultural Rural Residential

Requests the Board of Appeals approve and grant 2 variances to allow for the construction of an accessory structure (parking field) in association with a customary agricultural use at 8441 County Road:

- 1.) A variance to allow for an accessory structure in the front yard space of a primary structure.
- 2.) A 25' variance to allow for a 20' setback to an accessory structure in the front yard space of a primary structure.

Appeal No. 1 is in variance to §229-44 (E) and 229-41 (A).

DISCUSSION:

Chairman Michnik noted that Variance No. 1 has been removed from the agenda at the request of the applicant. That e-mail request is on file.

Appeal No. 2

Jean O'Connell
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 12' variance to all for a 32 square foot sign located on the southwest corner of Main Street and Ransom Road.

Appeal No. 2 is in variance to § 181-3 (D).

DISCUSSION:

Chairman Michnik noted that Variance No. 2 has been removed from the agenda at the request of the applicant. That e-mail request is on file.

Appeal No. 3

Brandon Houck
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 228' variance to allow for approximately a 310' front yard setback for the construction of a single family home at 8187 Tonawanda Creek Rd.

Appeal No. 3 is in variance to §229-31(A).

DISCUSSION:

Brandon Houck, owner of the property, and Michael Metzger, of Metzger Civil Engineers, are present.

Six (6) neighbor notification forms are on file.

Mr. Metzger said the property configuration is how it was when Mr. Houck purchased the property; he has not made any lot line adjustments. The parcel is 125' wide at the road, it opens up as it goes to the back, it has a 420' width at the back, and is almost 11 acres. There is an existing garage on the property

that is located towards the frontage, it is an 1100 square foot sound structure and is used daily. The home that is immediately next door to the southeast has a side load garage with a driveway that comes out onto the subject parcel. That driveway is contained within a 60' access easement; the easement was placed there specifically for that driveway. The property up front is fairly manicured; the balance of the property is well wooded. The applicant would like to build a home; he is to be married soon and wants to start off with a new house. The total width of the proposed house is 85' and has a side-load garage, but regardless of the size there is physically not enough room within the 125' of frontage. Working within the limits of the setbacks of the homes on either side and the existing garage, which is 30' wide and 3' off the property line and the 60' easement that cannot be built on, there just isn't enough room. There is about 32' from the edge of the easement to the garage wall; if there is a reasonable amount of setback to that garage it would leave about 20' of width to fit a house. The applicant's would like to have their home placed in a more natural setting and further back into the wooded area on the parcel. They are willing to build 500' of berm, 4' high; split on either side of the entrance back to the home, the berms would block any site lines to existing homes. Excess soil from the Niagara County Produce project will be used at this site; about 4,000 cubic yards of soil will be brought to the site to be used for the berm. Mr. Metzger distributes an aerial photo of the site printed from the Erie County Department of Environmental & Planning Office of GIS. The homes in the immediate area have been highlighted with red marker. The proposed home has been drawn in black and the proposed berm in red. A copy of this photo is on file. Mr. Metzger said he wanted to create a visual that would show there are surrounding homes with similar setbacks as the one being requested. He said the proposal is consistent with the neighborhood. The two (2) homes immediately across the street have a significant setback at about 230' and 236'. There are also a couple homes to the west that have a large setback.

Mr. Metzger clarified that, due to some miscalculations, he needs to correct the variance request to a 203' variance, not a 228' variance. The property does not fall within the floodzone as it is high enough in elevation. Mr. Metzger referred to the five (5) criteria that the Zoning Board of Appeals members look at when reviewing a request. The granting of this variance would not harm the character of the neighborhood, it will enhance it. There is no other reasonable method available to achieve this same benefit because of the measurement constraints Mr. Metzger previously explained. The requested variance is not substantial as it is not a wide ranging impact that affects properties. Any impacts resulting from granting this variance would not be any greater than if a home were to be built within the 125'; there would not be a detriment to the physical conditions. This difficulty is not self-created; the lot was purchased as is with property lines as they currently exist. The easement was in place and the structure was there when the property was purchased by the applicant.

Mr. Hickey asked if the applicant owns the property to the south east. Mr. Houck said yes he owns it and has lived there since 2009. He bought the subject property in 2006 and the easement was put in place when the home was built. Deputy Town Attorney Steve Bengart reads from a deed dated December 13, 1967 in which it appears to have that easement as part of it. Mr. Hickey asked what the applicant is going to do with the property he lives at now after they build a new house somewhere. Mr. Houck said he plans on retaining the property; at this point he does not know who will live there.

Mr. Metzger points out the location of each neighbor notification form.

The structure that is on the property now is used for storage of Mr. Houck's truck and his lawn mower and other maintenance/residential landscaping equipment like shovels. Mr. Hickey asked if the applicant considered removing that structure. Mr. Houck said it is a sound building.

The new house is roughly 3,000 square feet. Mr. Hickey asked where the applicant would want to build the house if the 1,100 square foot structure wasn't there. Mr. Houck said even if that structure wasn't there he is not sure there would be enough room to squeeze the house in there. Mr. Metzger said this house being 85' wide and a side-load garage with a driveway 30' out from the house and 115' wide, at the 15' minimum setback would be wider than 125'.

Mr. D'Amato asked how far back the proposed house will be from the property line of the parcel the applicant currently lives on. Mr. Metzger said it will be about 70' this provides ample room to put the berm in. Mr. D'Amato said he doesn't think the berm is a point to be considered because the applicant owns that piece of property. Mr. Metzger said there is another neighbor to the east that the berm will provide visual buffering to as well. Mr. D'Amato asked if the applicant has a back-up plan if the Board denies this request. Mr. Houck does not. He has lived on Tonawanda Creek Road since the second grade; he belongs there. Mr. D'Amato asked if the applicant can move the house up; he feels the request is a significant one. Mr. Metzger said it could be moved forward. Mr. D'Amato asked if the applicant considered knocking down the existing home and building a new home on both lots. Mr. Metzger pointed out that the existing home is a beautiful home. Mr. D'Amato said there will be drainage issues. Mr. Metzger said this site has a ditch that runs along the one property line that goes out to Tonawanda Creek and there is another substantial ditch that gets picked up in a culvert and heads out, then there is one that runs behind the applicant's existing home. The neighborhood is well buffered from any drainage that would be created by building this home; it is surrounded by drainage ways that will carry the water away. Mr. D'Amato asked the applicant if he knew about setbacks when he purchased the property. Mr. Houck did not.

Mr. Mills said the setback is substantial; he would like to see a compromise. The easement is not an issue because it runs with the current house, the driveway could be repositioned or the easement could be removed. Mr. Metzger pointed out it is a long driveway and the garage is a side-load. A new driveway could be built but it would be at a cost and very close to the property line. The proposed home is single-story. Mr. Mills said the house could be re-configured so it isn't as wide. The majority of the structures on the applicant's side of the street are much closer to the road.

It is clarified that the existing driveway will be used in part for access to the proposed house. Chairman Michnik likes the berming and pointed out that it shields several properties both to the east and to the west. The berm at the base would be approximately 26' and 10' off the property line. If the proposed house was moved up 35' it would be at the base of the berm.

Mr. Metzger said the house could be brought up significantly at the cost of shortening up the berms, pulling them back and further away. Mr. D'Amato said the berms should not be a factor; they can go in on his existing property. Mr. Metzger agreed but noted not on the other side because he doesn't own that property. Mr. D'Amato suggested tabling the item to allow the applicant time to discuss the options of moving the location of the house. Mr. Metzger said timing is an issue because of the soil that will be used from the Niagara County Produce site for this project; they plan on going to construction at that site within the next week or two and one of the first things that will be done is the excavation of the pond and that is the soil that will be used for Mr. Houck's property.

It is suggested that the request be tabled to allow the applicant time to discuss options with their engineer and come back before the Board at the end of the meeting. The applicant agreed with this action.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills, to **table** Appeal No. 3, to allow the applicant to discuss options with their engineer.

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

MOTION CARRIED.

Appeal No. 4

Douglas Cipollone
Residential Single Family

Requests the Board of Appeals approve and grant a 50' variance to allow for a 150' front yard setback for the construction of a new home at 9121 Roll Road.

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

DISCUSSION:

Douglas Cipollone, of Cipollone Custom Homes, is present and explained that the parcel has 360 foot of frontage by 6.5 acres. There are some wetlands involved so they are restricted to building a home within a 120' wide by 200' deep portion of the parcel. The septic has to be placed in the front yard because of the wetland bordering the west side of the property. The family who will be living there have younger children so they want to be setback from the road for safety reasons. This will not be a spec house it will be built for a couple with the family. Mr. Cipollone does not own the property yet, Mr. Radke still owns the property. Mr. Cipollone said he thinks the property changes hands tomorrow.

Mr. Cipollone submits a neighbor notification form from the neighbor to the west of the property. He has been to the property of the owner to the east but he cannot get a hold of them.

Chairman Michnik asked advice from the Deputy Town Attorney regarding the fact that the applicant does not own the Property. Deputy Town Attorney Steve Bengart asked if Mr. Cipollone had anything from the present owner allowing him to come in for the request. Mr. Cipollone said he has been working on the entire deal to try and make it happen, he has a permit from the DEC which he filed with his name on it. The property will be transferred to the Toriello family, Mr. Cipollone has been working as the agent with Mr. Radke. Mr. Callahan said Mr. Radke has been in contact with the Planning Office, he lives in Vermont and has inherited this property. Mr. Radke identified to Mr. Callahan that Mr. Cipollone will be representing him. Deputy Town Attorney Steve Bengart said if the property never sold, somebody who is not the applicant got a variance on a piece of land without written permission from the owner. Mr. Hickey asked if a condition could be set on a possible variance on proof of his agency within the next few weeks or five (5) business days. Mr. Cipollone said if his clients close on the property tomorrow he should be able to get proof of ownership then. Mr. D'Amato asked if he could have the proof by the next meeting. Mr. Cipollone said he could. He is not under a time constraint. If the property is not ready to close, Mr. Cipollone will need to obtain a notarized letter from Mr. Radke giving permission to Mr. Cipollone to request the variance or a copy of the deed and a letter indicating the same thing from the new owners. Mr. Cipollone said he can do that. He said it is acceptable to him to table the request until the documentation is in place.

ACTION:

Motion by Jonathan Hickey, seconded by David D'Amato, to **table** Appeal No. 4 until the April 2013 meeting to allow the applicant to obtain the proper documentation as discussed.

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

MOTION CARRIED.

Appeal No. 3

Brandon Houck
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 228' variance to allow for approximately a 310' front yard setback for the construction of a single family home at 8187 Tonawanda Creek Rd.

Appeal No. 3 is in variance to §229-31(A).

ACTION:

Motion by Ryan Mills, seconded to by David D'Amato, to **re-open** Appeal No. 3 under New Business.

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

MOTION CARRIED.

DISCUSSION:

Mr. Metzger said their preference is to not move the berm onto Mr. Houck's existing home site. There is a large ditch in that area and the applicant prefers to not have to relocate that ditch. They are willing to bring the berm that is immediately behind their property, as well as the berm on the opposite side not at a 10' setback but a 5' setback. They would like to have some flat area for maintenance purposes. The home could be moved closer to the berm; there would be a 15' setback from the toe of the slope to the front of the house. The house would be moved another 25' forward from where it was originally proposed. So the requested variance is now 178' setback.

Mr. Mills asked if the applicant is agreeable to a condition on the approval of having the berms installed within 6 months of the issuance of the Certificate of Occupancy. Mr. Metzger and Mr. Houck said that is acceptable. Mr. Houck said the berm would consist of evergreens, spruce and some decorative foliage like Bradford Pears.

ACTION:

Motion by Daniel Michnik, seconded to by Ryan Mills, to **approve** Appeal No. 3 as follows: a 185' maximum variance to allow for a 267' front yard setback for the construction of a new home at 8187 Tonawanda Creek Road. The berms are to be constructed within 6 months from the issuance of the Certificate of Occupancy.

ON THE QUESTION:

Mr. Hickey said this is an irregularly shaped piece of property. He does not think that a precedent is being set.

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

MOTION CARRIED.

Motion by Ryan Mills, seconded by David D'Amato, to **approve** the minutes of the meeting held on February 12, 2013, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:15 p.m.

Carolyn Delgato
Senior Clerk Typist