

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday April 9, 2013
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
David D'Amato

Vice-Chairman Ryan Mills
Jonathan Hickey

Zoning Board of Appeals members absent: Patricia Burkard

Town Officials present:

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

Other interested parties present:

Gregory Thrun
Douglas Cipollone
Larry LaDuca
Noel Dill

Richard McNamara
Angelo Natale
Paul Gilden
Paul Stephen

Chairman Michnik said a letter was received from Mr. Jeff VanMarter dated March 14, 2013 in which he stated a request to re-open a Zoning Board of Appeals variance that was specific on what his options were. Since there are only four (4) members of the Board in attendance this evening, Chairman Michnik wants to postpone the vote until the entire board is present. If the Board chooses to re-open the variance it would have to be by a unanimous vote.

Old Business

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 is present. Chairman Michnik said a copy of the warranty deed has been received and is on file. The request remains the same. Mr. Cipollone said the main reason for the request is that the septic system has to go in front and drain into the culvert in front of the house. He noted that the property

is now owned by Scott and Carin Tauriello, whom he is building the home for. Mr. Cipollone has been granted full authority by the Tauriello's to act on their behalf in requesting this variance.

Mr. Mills asked why less of a variance will not suffice. Mr. Cipollone said if he goes back 150' and puts a driveway in, they are only allowed to build on 120' of the frontage which borders the wetland. They have obtained a permit from the DEC. He also needs to get his water lines in. Mr. Mills referred to the DEC and National Wetlands Inventory Map, this map is on file. Mr. Cipollone pointed out the proposed location of the house as permitted by the DEC, the house has to be at least 25' away from the wetlands. If the variance is not granted the applicant would not have bought the property, which is why they were trying to obtain the variance before. However, they did purchase the property not knowing if the variance would be approved. If needed, Mr. Cipollone can obtain the documentation noting that the proposed location is the only location they are allowed to build on, due to the wetlands. The wetlands study is on file in the minor subdivision folder in the Planning and Zoning Office. There will be a 2,000 square foot first floor; the total square feet of the house will be 3800.

It is clarified that if this setback is granted it will be a factor in establishing the setbacks of surrounding homes. Currently the setback is 45'-100' in that Residential zone.

Deputy Town Attorney Steve Bengart asked if the adjoining properties could meet the required setback if this variance was requested. Mr. Callahan said yes, it is wide open.

ACTION:

Motion by Jonathan Hickey, seconded David D'Amato, to **approve** Appeal No. 4, under Old Business, as written.

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

MOTION CARRIED.

New Business

Appeal No. 1

Bobby Corrao/Natale Builders
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a 2' variance to allow for a 5' side yard setback on the north side of the property for the construction of a new home at 6829 Rivera Way.

Appeal No. 1 is in variance to §229-63.

DISCUSSION:

Angelo Natale, president of Natale Builders is present along with general manager Larry LaDuca. Mr. Natale said there is a lot that he didn't realize has a 10' public easement on it when he sold it. The easement is on the south side of the property. The house was designed and the plans were purchased. He explained that the typical side yard setback on the interior portion of Rivera is 7'. The house is 55' wide on a 70' wide lot; this put them into the public drainage easement area by 2'. They tried to manipulate the house measurements but to no avail. Originally, they thought it was a private easement, but it turned out to be a public easement.

Mr. D'Amato asked how many other lots are available in the development. Mr. Natale said there are about 15 left. They have four (4) different house designs and none of them could be scaled down; what is proposed is the most economical plan. If the variance is not granted the potential buyer would probably have to move into an apartment because her current home has sold. Mr. Natale would have to come up with an entirely new design for a house to be built on this lot if the variance was not granted, but the potential buyer does not want a different design.

Mr. Mills wondered if the applicant could accommodate his client with a different lot. He asked if there is a reason the applicant has only 4 designs and not offering custom designs in that neighborhood. Mr. Natale said they came up with the designs to be cost effective and to know how to build the homes. The lot to the north is a corner lot and a bit larger, so they could build a house on that corner lot and place it so there is more room between that house and the proposed house for 6829 Rivera Way.

Mr. Hickey asked what kind of hardship may be encountered if the applicant drew up a different design. Mr. Natale said the buyer is an older woman and she wants that particular design. Time would also be an issue in drawing up a new design because she has already sold her house and she is ready to move. Mr. LaDuca said if this variance is granted it will not be an issue to the existing homes built or to any future homes that will be built in the subdivision. It will not set a precedent.

ACTION:

Motion by Jonathan Hickey, seconded by Ryan Mills, to **approve** Appeal No. 1, as written.

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

MOTION CARRIED.

Appeal No. 2

Gary Russell
Residential Single Family

Requests the Board of Appeals approve and grant a 7' variance to allow for a 3' side yard setback for the installation of a detached accessory structure (generator) at 8780 Haley Court.

Appeal No. 2 is in variance to §229-55.

DISCUSSION:

Paul Gilden is present; he is the petitioner for the installer of the generator. Gary Russell was unable to attend the meeting as he is out of town. Mr. Gilden explained that the applicant wants to put the generator on the side of the house because he has a patio in the back yard where the land drops down and Mr. Russell does not want the generator to be visible when he is sitting on his patio. The gas and electric meters are both on the side of the house at the proposed location. There are wetlands on that side of the house so nothing will be built there. The generator is a small unit, 30 inches square, about the size of an air conditioning unit and has 7,000 watts.

There are no neighbor notifications on file. Mr. Gilden explained that the one neighbor is in Florida and there is no neighbor on the other side.

Mr. Mills asked how much the smaller model generator will operate. Mr. Gilden said eight (8) circuits. Mr. Mills asked if Mr. Gilden could see any other reasonable location for the generator. Mr. Gilden said the only other location would be around the back but they would have to build that up because the land drops down quite a bit, they would also have to get the gas and electric lines back there. Mr. Mills asked if the owner planned on providing landscaping around the generator. Mr. Gilden did not discuss this with the owner. Mr. Mills pointed out that the generator would be visible as you drive down Haley Court.

Chairman Michnik suggested locating the generator behind the house where there is a small opening. Mr. Gilden did not see the opening that Chairman Michnik referred to but he will look into it.

Mr. Gilden said if he located the generator in the back of the house it would cost about \$300-\$400 more. The increase is because the gas line would have to be extended. The approximate cost to install the generator at the proposed location is \$4500. Another reason Mr. Russell preferred this location is because there is no bedroom on that side of the house.

It is confirmed that the lot on the northeast side of 8780 Haley Court is not a buildable lot.

In response to Mr. D'Amato's question, Mr. Gilden said he works for Energy Cost Control and has installed approximately 300 generators in the Town of Clarence. Mr. D'Amato asked if the owner would agree to shrubbery around the generator. Mr. Gilden said he cannot speak for the owner but he doesn't think Mr. Russell would have an objection. Mr. Gilden is concerned with the landscaping on the side of the generator because the land drops off in that area. He thinks it would look better with landscaping at the front of the generator anyway.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 2 with the condition that the applicant provide a landscape buffer on the front of the unit, which faces south, and if feasible provide a landscape buffer to the northeast side of the generator as well.

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

MOTION CARRIED.

Appeal No. 3

Noel Dill/Rock Oak, Phase III
Commercial

Requests the Board of Appeals approve and grant an 8' variance to allow for a reduced setback of 17' for the construction of new homes in Phase III of Rock Oak Manufactured Housing Park. Applicant's project includes attached and detached garages that limit the proposed setback between two structures at 17'.

Appeal No. 3 is in variance to §135-3(E).

DISCUSSION:

Noel Dill explained that he is asking for this variance for one specific case. He said they drew up the plans for this phase and thought they addressed every issue. He referred to the overall site plan and said he had the project engineer draw every house and garage identifying the worse case setback. They discovered that when there is a detached garage on a lot and an attached garage on the next lot, the distance between them is 17' because the attached garage is considered part of the house. The distance between the two should be 25'.

Paul Steven is present.

Mr. Hickey asked if the paperwork in the file depicts four examples or if there are only four lots that will be affected. Mr. Dill explained that they are looking for a blanket variance for the 71 lots but only in the circumstance where the relief they are seeking is between an attached garage and a detached garage. Mr. Hickey asked how many times this scenario will come up. Mr. Dill said the straight stretches of streets shown on the site plan will be where this scenario may pop up. He estimated about 13 lots may need the variance. Mr. Hickey and Mr. Dill discuss possible scenarios. Mr. Dill said the distance between structures will never be less than 17'.

Mr. Callahan noted that the Planning Office worked with Mr. Dill to cover all scenarios and the request reflects the maximum variance he would need.

Mr. D'Amato asked at what point the applicant realized a variance was needed. Mr. Dill said just within the past 2 weeks as they were getting ready to build. Mr. D'Amato asked if the houses or garages could be made smaller. Mr. Dill explained that these houses are built in sections and each section is a standard size. The width of the houses cannot vary but the length can. Mr. Steven said the garages are at the minimum size for what he thinks will look good in this development. Mr. D'Amato said this is a significant problem in the scope of developing land and homes. Mr. Dill noted that this request does not impact safety in any way. Mr. D'Amato suggested not giving potential buyers the choice of what design they want and just saying this is what is going to be built on the lot, which would solve this problem. Mr. Steven said some people have already picked the lot they want. More scenarios are discussed. An attached garage increases the price of the homes by \$10,000, some seniors cannot afford that.

Mr. Dill does not have an elevation with him. The cost ranges between \$134,900-\$144,900 for a 1500-1733 square foot unit.

It is confirmed that this variance will not be needed for every lot in this Phase; it will apply to only a minority of lots.

Mr. Callahan noted that he worked with the applicant to figure the maximum variance needed. There was no way to tell how many lots would need a variance; it would have to be determined as the project progressed. These houses are going to look exactly like they always do; it's just an internal issue the way the code reads that there has to be a 25' separation.

Mr. Hickey asked if there are other scenarios that could arise besides the four (4) examples provided. Mr. Dill said the 4 examples are the sum total of it.

Mr. Mills asked if there was an option for no garage. Mr. Dill said they are not allowing that, nor are they allowing sheds.

Greg Thrun asked about the option of putting the garage on a different side than what the plan indicates. Mr. Dill said the plan was designed to alternate home, garage, garage, home in order to create all the setbacks, so that is already part of the overall design and they wouldn't alter it.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 3, as written.

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

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** the minutes of the meeting held on March 12, 2013, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:13 p.m.

Carolyn Delgato
Senior Clerk Typist