

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday August 9, 2011
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	Vice-Chairman Daniel Michnik
Ryan Mills	David D'Amato
Robert Geiger	Patricia Burkard

Town Officials present:

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

Other interested parties present:

Michael Thomas	Joe Rubino
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Appeal No. 1

Michael Thomas
Residential Single Family

Requests the Board of Appeals approve and grant a 2' variance to allow for the construction of a fence 8' in height at 8665 Sunset Drive.

Appeal No. 1 is in variance to §101-3 (B).

DISCUSSION:

Michael Thomas is present. He has lived in the house for three (3) years and he is attempting to dampen the road noise that comes from Wehrle Drive, which is immediately behind his house. He looked into a 6' fence, but Wehrle Drive is significantly elevated so when the dump trucks from the quarry drive by the noise comes across the property right at the house. The profile of the truck tires is well above the 6' rail of the existing fence. He has lilac hedges there but they do not cut the noise at all. He feels this is a hardship and makes it unpleasant to be in the backyard at any given time. If and when he decides to sell the property the road noise will be an issue. He bought the property after he visited it on a Sunday in the winter, so he experienced very little traffic at that point. Neighbor notification forms are on file. The constant dump truck traffic starts at 7am and goes until 6pm, making it intolerable. He has a young daughter and he is sure this does not help to keep her asleep. Mr. Thomas noted that there are other fences further down towards Connection Drive. There are no fences on either side of his property and he is not behind the tree line.

Mr. Geiger asked how old the septic tank is, Mr. Thomas did not know when it was installed. The three pine trees in the immediate area are on Town property.

Mr. D'Amato asked how close the proposed fence would be to the existing Town fence. Mr. Thomas would want at least 5' between them so he could maintain the wooden fence. Mr. D'Amato wondered how that property would then be maintained. Mr. Thomas said he could go closer to the Town fence but he does not want to encroach on Town property. Mr. D'Amato does not believe that an 8' fence is going to provide the noise reduction that the applicant is looking for. He explained that there is privacy mesh fencing that could be attached to the Town's existing chain link fence, but he is not sure that would be allowed. Town Attorney Steve Bengart said that is not something that would be allowed. Mr. D'Amato voices his concern with setting a precedent; if this is approved others will want approvals as well and that would change the whole neighborhood.

Mr. Thomas feels that the quarry traffic has increase significantly over the past three (3) years. The type of fence he envisioned is a dog-eared pine pressure treated lumber fence.

Mr. Mills agreed with Mr. D'Amato and voiced his concern regarding the gap between the proposed fence and the Town's fence. He also worries about the precedent of a larger fence. Mr. Mills' preference would be to see more landscaping, maybe taller trees. He asked if the applicant looked into a vinyl fence and wondered if that had more of a noise absorption quality. Mr. Thomas said to a certain extent, but it is more expensive than a wooden fence. Mr. Mills said maybe a 6' vinyl would absorb more noise than an 8' wood fence. Mr. Thomas knows that the fence will not eliminate the truck noise all together, but it will certainly help. Mr. Mills asked if the applicant's priority was to cut down on the noise or is it a visual issue. Mr. Thomas said his priority is to cut down the noise; visual would be secondary.

Mr. Michnik said the hardship is self created because the applicant bought the home knowing that the Town park is right there along with Wehrle Drive which will have traffic from the quarry. He is concerned with setting a precedent which will result in creating a wall along the backyards in this area. Mr. Michnik likes the idea of a 6' vinyl fence, he thinks it will look nicer and accomplish what the applicant is trying to do. He is also concerned with how the applicant will maintain the area between the proposed fence and the Town fence.

Mr. D'Amato suggested the applicant may accomplish the same result by creating a berm in his backyard with 10'-15' pine trees.

Chairman Henning does not think there is much difference in sound between a 6' fence and an 8' fence. He agreed with Mr. Michnik in that this is setting a precedent as there are many houses in the area.

ACTION:

Motion by David D'Amato, seconded by Arthur Henning, to **deny** Appeal No. 1 as written.

ON THE QUESTION:

It is clarified that a 6' fence can be installed on the property right up to the existing Town fence with a permit issued by the Planning and Zoning Office. Mr. Mills referred to §267 Area Variance of the New York Town Code in which the code asks if it will produce an undesirable change in the neighborhood. Mr. Mills thinks an extra 2' will produce an undesirable change in the neighborhood because no other fences exist along the rear lot line. The applicant can achieve this result through other means such as additional landscaping/berm or different style fences. 2' is a substantial request. The alleged difficulty is self created because the applicant new where the location of this house was.

Robert Geiger	Nay	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Appeal No. 2

Ranchview LLC/Joe and John Rubino
Residential Single Family

Requests the Board of Appeals approve and grant a 4.5' variance to allow for a 15.5' front yard setback to a principal residence on a corner lot at 6029 Samantha Lane. Existing subdivision Map Cover No. 3453 front yard setback line established 20'.

Appeal No. 1 is in variance to §101-3 (B).

DISCUSSION:

Joe Rubino is present. Mr. Rubino explained that this is a corner lot, which he knew when the subdivision was approved. Being on a corner creates a more restrictive building lot. The side yard setbacks are 10', which are being complied with on one (1) side. The rear setback is 20' and he is in compliance with. There are basically two (2) front yard setbacks on this property. Putting the structure on the property, Mr. Rubino is short three feet (3') in the back corner and the front corner is short 4.5'. On the sides he is 33' from the curb on the back end and on the front end he is 31'5", he hopes this is sufficient.

Mr. Michnik asked if the applicant knew he was going to be short. Mr. Rubino said no, he had different plans. This corner lot is actually 83' wide. The lot next to it is 76' wide. With the 10' side setbacks, it fits a 55' wide home. Mr. Michnik asked if the buyer could put that size home on any other lot. Mr. Rubino said there was another lot but it was very expensive because a cul-de-sac had to be put in and some wetlands were impacted, so the premiums on those lots are higher and out of that potential buyer's price range. Mr. Michnik asked what the price difference is for the size of the home that the potential buyer wants compared to what could be put on the property. Mr. Rubino said there is a \$40,000 difference. If the larger house is put on the property it's a \$380,000 house. If the house that fits the lot is built, it is a \$340,000 house. Mr. Michnik asked if there is a different tax rate on condos versus patio homes. Mr. Rubino said yes. He explained that out of 19 sales, there are zero people in schools. Mr. Michnik can't figure out why the Town Board and the Planning Board let a plan like this go through if there was going to be such problems at the back end like this. If this variance is granted, Mr. Michnik is afraid the applicant will come back on another lot and ask for another variance; he does not want to set a precedent.

Chairman Henning asked what the sizes of the homes are. Mr. Rubino said they range from 1650 to 2400 square feet.

Mr. Rubino clarified that this lot can accommodate the Town Code without obtaining a variance. In response to Mr. Mills' question, Mr. Rubino said the price difference between this lot and the lots on a cul-de-sac is \$45,000. Mr. Mills is concerned with the applicant coming back to ask for variances for other lots in the development. Mr. Rubino explained that most of the other lots are 66' wide (not including the cul-de-sac) that means the 46' wide house plan will fit on those lots and that is the plan they are pushing for those lots. He cannot put the 56' wide house plan on the 66' wide lots, which is not his

intention. Mr. Mills asked if the applicant will lose the clients if the variance is denied. Mr. Rubino said this is the house they want and he cannot shrink the width by 4.5 feet.

Mr. Rubino stated that the potential buyer does not currently have a contract with him.

Mr. Michnik clarified that the house that could go on the lot is \$305,000, the house that the applicant wants to put on the lot is \$380,000.

ACTION:

Motion by Arthur Henning, seconded by Robert Geiger, to **approve** Appeal No. 2, as written.

Robert Geiger	Aye	David D'Amato	Nay
Ryan Mills	Nay	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** the minutes of the meeting held on June 14, 2011, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Aye		

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** the minutes of the meeting held on July 12, 2011, as written.

Robert Geiger	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye
Arthur Henning	Abstain		

MOTION CARRIED.

Meeting adjourned at 7:45 p.m.

Carolyn Delgato
Senior Clerk Typist