

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday September 8, 2015
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	Richard McNamara	

Zoning Board of Appeals members absent: Gregory Thrun

Town Officials present:

Director of Community Development James Callahan	Deputy Town Attorney Steven Bengart
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Motion by David D'Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on August 11, 2015, as written.

Richard McNamara	Aye	Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Sandra Smith	John Smith	Jim Volk	Frank Rivett
Ann Christopher	Jay Christopher	Matt Doherty	

New Business

Appeal No. 1

John and Sandra Smith
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

- 1.) A 7' variance to allow for a 3' side yard setback.
- 2.) A 13' variance to allow for a 12' rear side setback.

Both requests apply to the proposed addition of a detached accessory structure located at 8435 Lapp Road.

Appeal No. 1 is in variance to §229-44(F)(2-3).

DISCUSSION:

John and Sandra Smith are present. Mr. Smith submitted one (1) neighbor notification form from the property to his west. He went on to explain that going east towards Green Acres Road the land is all wooded, there are no other houses, it is all gas company property.

Mr. Smith explained that he is requesting the variance because he needs more storage for his travel trailer that he wants to get out of the weather in the winter time. He travels a lot during the winter so he would like to have everything under cover and protected. It will be a cold storage structure. There will be a concrete pad. The siding on the existing garage will be redone with metal siding to match what will be used on the proposed structure. There will be a man door and a garage door. His neighbor has the same metal siding that he is proposing.

Mr. McNamara asked if there will be a business run out of the proposed structure. Mr. Smith said no, it is just for storage of his personal items.

Mrs. Burkard asked if there will be electricity in the structure, Mr. Smith said no. Mr. Smith said he and Mr. Honsberger are discussing the small piece of land behind Mr. Smith's property. Mr. Smith may purchase it from Mr. Honsberger. Mrs. Burkard noted that the addition is going to be higher than the existing building, Mr. Smith said that is because of the height of his trailer. There will be a window at the peak of the garage for aesthetics and ventilation. Mr. Smith bought the house in December 2014 and the existing garage was there. Mr. Callahan said that garage probably originally complied with code.

Mr. Smith said BHF Construction will be building the structure, they are a sub-contractor for Fingerlakes Construction. The concrete floor might not be installed this year due to Mr. Smith's work schedule, however he would like to start the project as soon as possible. There will not be a loft in the structure.

Mr. Mills read an e-mail from Joseph Lancellotti, a Civil Engineer for the Town of Clarence, dated August 31, 2015: "Please inform the owner that he must see us in the Engineering Office to complete a Floodplain Development Permit for his shed." Mr. Smith said he has been to the Engineering Office to discuss this already. He referred to a document entitled the Erie County Department of Environment and Planning Office of GIS depicting an aerial view of the tax map parcel outlines for 8400 and 8435, it also shows where there are FEMA Floodplains and DEC Wetlands, the document is NOT on file. Mr. Smith said a small corner portion of his property along Lapp Road shows floodplains/wetlands so he was told by Mr. Lancellotti that he would not need that plan (permit). Mr. Smith plans on paving the stone area on the side of the structure.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Mills said the applicant has provided evidence and testimony that there is a great deal of rural agricultural open land around him without any residences in the immediate vicinity, most of that adjacent property appears to be owned by one individual and/or a gas company. For these reasons it does not seem that the setbacks would have any impact on nearby neighbors.

Richard McNamara	Aye	Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

James Volk
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 25' variance to allow for a 125' front yard setback for a proposed single family home located at 10193 Shamus Lane.

Appeal No. 2 is in variance to §229-41. *Map cover defined front yard setback of 100'.

DISCUSSION:

James Volk is present. One neighbor notification form is on file. The form is from Frank Rivett who is present and said he had a conversation with the property owner of 10175 Shamus Lane and that property owner is aware of the variance being requested. Mr. Volk said he is trying to be consistent with the neighbor that is across the street that has the same variance. From a curb appeal objective, he said, these are 3800 square feet or larger homes and he thinks the setback enhances the look of the neighborhood. There is plenty of greenspace, the property is 2.45 acres with 310' of frontage. Mr. Volk has grandchildren and it would be safer to have them in a front yard that is further away from the road. He plans on building the side garage to exit on to Dillon Court, this would give him 125' driveway to the home and 125' from the road; it puts the house equidistant from each property line. Mr. Volk reviewed the criteria that the Zoning Board of Appeals members need to look at and he thinks this variance will enhance the neighborhood, it doesn't do any harm or encroach on any neighbors, overall it is a good fit for the house.

It is clarified that the house across the street received a 25' variance and the setback for the house at 10175 Shamus Lane is 100'-110' max.

Mr. Volk closed on the property in May 2015. He will start to build as soon as he obtains the building permit, he hopes next week. The house will be a two-story home approximately 3870 square feet in size. Mr. Mills asked what the negative impact would be if the house was setback 110'. Mr. Volk said the request provides consistency going forward. He knows others will ask for something similar and this provides some flexibility. There is a tree in the middle of his property that will have to come down. Mr. Mills is concerned with the aesthetics of the street, if 10175 Shamus Lane is back 110', the applicant would be back another 15' from that. He doesn't think there are too many other properties on the street that have received setback variances except 10180. Mr. Volk said the last lot in the development also received a setback. It is clarified that Dillon Court will extend down in Phase II of the development. Mr. Volk pointed out that the house at 10175 is at an angle and the front corner of the house is at 110', most of the house is back beyond the 110' setback. Mr. Volk also noted that the road bends going east so the next house to be built could be set back even further than his. Mr. Mills said he is trying to avoid the scenario where everyone who builds a house on this street will now come in for a variance to keep the alignment. Mr. Rivett noted that the current zoning would allow for 200' if the plat map hadn't been filed in that moment in time when it was 100', by today's codes the applicant would not even be before the Board. Mr. Volk said he is trying to be consistent with what is around him and look to balance the curb appeal versus the greenspace and back. Chairman Michnik said what happens across the street shouldn't have any bearing on what the applicant is talking about on his side of the street. Mr. Volk disagreed because it is the whole street you will be looking at when you travel down the street.

Mr. Callahan clarified that if the map cover was filed today the setback would be at 200'. The lots are two-acre minimum.

Chairman Michnik said his only concern is the effect on the neighbor across the street on Dillon Court. If this request is granted it will set a trend through the entire subdivision depending on when the lots are sold. He also pointed out that when the applicant bought the lot he knew what the conditions and restrictions were. Mr. Rivett said the Town loved this development because there is so much greenspace and the lots are large. When he developed this he never envisioned setbacks at 100', the lots are just too large and people would want to take advantage of the property. The subdivision has been open since 2008, however the plat map was officially filed in 2004. The zoning changed in 2005. Mr. Callahan said to change the plat map is a Town Board process. Mr. Mills said it might be worth it to go before the Town Board depending on how many lots are yet to be developed. Mr. Volk said if the Town Board amends the plat map and the Zoning Board does not grant his request he will be the odd man out because he is looking to build as soon as possible. The process for amending the plat map could take up to six (6) months.

Mr. McNamara noted that the lots are deeper on the east side of Dillon Court than they are on the west side. He also pointed out that the back corner of the house at 10175, being on an angle, would be in line with the back of Mr. Volk's house if the variance is granted.

ACTION:

Motion by Patricia Burkard, seconded by Richard McNamara, to **approve** Appeal No. 2 as written.

ON THE QUESTION:

Mr. Mills asked if it is the developer's intention to file an amended map cover for the subdivision. Mr. Rivett said he is not sure because of the time frame it would take to go through the process. Mr. Callahan said he will approach the Planning Board and the Town Board on this matter. Chairman Michnik asked if it is going to be fair that the map cover is changed to a 200' setback and the existing house at 10175 is at 110'. Mr. Mills said if the developer is going to amend the map cover maybe the Board members would be more in favor of granting this variance. Mr. Rivett said he will work with Mr. Callahan to get the issue in motion.

Deputy Town Attorney Steve Bengart noted made sure that Mr. Volk understands that if this variance request is granted and they do go out, the other houses might be further back. Mr. Volk understands and said he still wants the Zoning Board of Appeals to go ahead with a decision.

Richard McNamara	Aye	Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Nay		

MOTION CARRIED.

Appeal No. 3

Ann Christopher
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 66' variance to allow for a 116' front yard setback for a proposed single family home located at 10915 Stage Road.

Appeal No. 3 is in variance to §229-41. *Established front yard setback of 50'.

DISCUSSION:

Jay and Ann Christopher are present. Mr. Christopher explained they want to build a ranch with a walk-out basement. The house will be set right as the property drops and it would be 45' from the edge in order to have the walk-out basement and the garage is another 26' above that. The position of the house is because of the culture of the land. They have owned the property for three (3) years and they are now ready to build. Mr. Christopher is a builder and he will build the home along with assistance from Rubino Bros.

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

Mr. Mills asked what the setback is for the house to the east of the applicant's property. Mr. Christopher said that property was granted a variance also, so the back of Mr. Christopher's house will be even with the back of that neighbor's house, he does not know the actual setback. Mr. Christopher said he looked into other options and found it would not work to move the house up. This is his third set of prints, it is the most sensible, budget friendly that would work for them. Mr. Mills asked if the applicant is aware of any other homes nearby that have similar setbacks. Mr. Christopher said he does not believe there is a similar setback on Stage Road because of the old quarry and the way it is cut out.

Mr. Christopher said the house would be a 2100 square foot ranch style home, but with the walk-out basement it will probably be approximately 3000 square feet.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills, to **approve** Appeal No. 3 as written.

ON THE QUESTION:

The applicant has provided evidence and testimony that because of the nature of the lot this is the only location where he can achieve the desired walk-out basement. The house adjacent to this property (at 10925 Stage Rd) has a similar setback.

Richard McNamara	Aye	Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 4

Matt Doherty
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow an 8' by 10' storage shed to be placed on the northwest corner of the vacant property located at 6032 Long Street, prior to a principal use on the property.

Appeal No. 4 is in variance to §229-55(J).

DISCUSSION:

Matt Doherty is present and explained that he has owned the property since January 2012, since then his neighbors have been storing his lawn equipment for him. It is time to make other arrangements for storing

his equipment and his only option is to build a storage shed on his property. He hopes to make progress within a year to build a home on this property, but until then he needs storage for his lawn equipment.

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

Mr. Mills asked for details on the construction materials of the shed. Mr. Doherty said it will be vinyl sided, the color is driftwood, and will have a dark brown roof. He plans on keeping this structure long term. He hopes to have final plans for the home within two or three months, so for the record, he plans on building the home within a year. The home would be approximately 2400 square feet in size.

Mr. Doherty said he does not need anything larger than an 8'x10' shed because he is only storing a 40" deck riding lawn mower and a push mower, and he does not want it to interfere with the aesthetics of the neighborhood. If he needs something larger in the future he will build it. The reason for the location of the proposed shed is because the primary drainage run-off is to the south west. The neighbors to his west have large maple trees, for the sheds protection from any fallen limbs, the northwest corner was the safest option. It will be a two-story house. Mr. Doherty could not obtain a picture of the proposed shed but he described it as an Amish built shed.

Chairman Michnik asked why the applicant is storing lawn equipment in the shed if he is not living there, he went on to ask if the applicant is in the landscaping business. Mr. Doherty replied no he is not in the landscaping business, the equipment is just to maintain the property. Mr. Doherty's current residence is 9480 Maple Street. Chairman Michnik asked the applicant if he would agree to a condition being placed on the approval stating that the shed would have to be removed if construction on the house has not started within a year. Mr. Doherty agreed to this condition. He plans on putting the shed on four by fours and leveling it off with blocks underneath it. He does not want to make it permanent in case he wants to move it once his house is built. He is aware that the Flight 3407 Memorial is on that side of his property and he stated that if there was an issue with the shed being too close to the memorial he could always move it to the south.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 4 as written with the condition that the shed be removed from the property if a building permit is not pulled within one (1) year from today, September 8, 2015.

Richard McNamara	Aye	Patricia Burkard	Aye	David D'Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned at 7:54 p.m.

Carolyn Delgato
Senior Clerk Typist