

**Clarence Zoning Board of Appeals Minutes
Tuesday, January 8, 2008
7:00 p.m.**

Chairman Raymond Skaine called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Raymond Skaine
Arthur Henning
Ryan Mills

Vice-Chairman Daniel Michnik
Hans Mobius
David D'Amato

Other Town officials present were:

Director of Community Development James Callahan
Assistant Director of Community Development Brad Packard
Town Attorney Steven Bengart
Councilman Bernard Kolber
Planning Board Member Richard Bigler

Other Interested Parties Present:

Thomas McGinley
Theresa Miceli
Christian Charnock
Dan Snyder

Kathleen McGinley
Perry Miceli
David Saleh

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on December 11, 2007, as written.

Raymond Skaine Aye
Arthur Henning Aye
Ryan Mills Aye

Daniel Michnik Aye
Hans Mobius Aye

MOTION CARRIED.

Old Business

Appeal No. 4

Thomas J. McGinley
Residential Single-Family

Requests the Board of Appeals approve and grant a 1' height variance to allow the construction of a 17' high shed at 5201 Brookhaven Drive.

Appeal No. 4 is in variance to Section 229-55 Accessory Structures.

DISCUSSION:

Chairman Raymond Skaine explains that on October 9, 2007 the Zoning Board approved the variance for the square footage increase, but denied the 17' height variance. Mr. McGinley then requested for his variance to be re-heard. Chairman Skaine asked what has changed between now and then regarding the one foot (1'). Mr. McGinley said there is an almost identical barn on Hillcrest that is 17' high; this shed sits low just as his will. Mr. McGinley does not know when this shed was put up. Chairman Skaine explains that Zoning Laws change.

Vice-Chairman Daniel Michnik said there is approximately a 30 inch drop from the septic field; so the view from the street will look like a 16' high shed, maybe even less. Mr. McGinley said the concrete pad will be 4" thick; this will not adjust the height too much.

Mr. McGinley is going to build the shed but it will look like the style Home Depot carries.

ACTION:

Motion by Hans Mobius, seconded by Daniel Michnik, to **approve** Appeal No. 4 under Old Business, as written.

ON THE QUESTION:

Town Attorney Steven Bengart clarifies that this approval is for the 1' height variance for the construction of a new shed at 5201 Brookhaven Drive.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Jim Callahan introduces Brad Packard, the new employee in the Planning and Zoning Office.

New Business**Appeal No. 1**

Perry & Theresa Miceli
Residential Single-Family

Requests the Board of Appeals approve and grant a 7' 5" variance to allow a 2' 5" side yard setback for the installation of a standby generator at 6275 Gott Creek Trail.

Appeal No. 1 is in variance to Section 229-55 (E) (1) Accessory Structures.

DISCUSSION:

Mr. Miceli explains that there would not be enough room to install a generator according to the proper setbacks in the Code. Mr. Miceli has the neighbors consent; he has offered the neighbor hook up

to the generator for his furnace plus one other hook-up of his choice. The generator would not be too close to the neighbor's house; there are bushes in the area and Mr. Miceli has offered to install a fence if there were any noise issues. Neighbor notification is on file.

Mr. Miceli explains that the size of the generator is in the middle to upper range for residential sizes.

Vice-Chairman Michnik voices his concern with the placement of the generator because the applicant may not have this same neighbor forever, the applicant may not live there forever either. Vice-Chairman Michnik suggests moving the generator up at least 7' or 8'. Mr. Miceli said anywhere along the side of the house is fine with him. Chairman Skaine suggests moving the generator up 10'-20'. Vice-Chairman Michnik said he would like to see the generator placed a foot or so back from where the evergreens start.

Mr. Henning asked what factors went into deciding the proposed location of the generator. Mr. Miceli explains the proposed location is where the electric and gas lines come in, the other side of the house would be uncomfortable and if it were placed far back the fencing makes the measurements tight. Mr. Henning asked for confirmation that the generator could be moved up without any hardship to Mr. Miceli. Mr. Miceli confirmed.

Mr. Mills agrees with Vice-Chairman Michnik in terms of moving the generator forward.

The gas and electric meters are located in the middle of the property along the side of the house.

Chairman Skaine points out that the property was not staked; this is a requirement. Mr. Miceli apologizes for not having the property staked.

ACTION:

Motion by Daniel Michnik, seconded by Hans Mobius, to **approve** Appeal No. 1 subject to the following conditions:

- the location of the generator is to be 3 ½ feet south of the northeastern corner of the house.
- there is to be a 7 ½ foot side yard setback.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 2

Christian & Tom Charnock/The Turf Doctor
Restricted Business

Requests the Board of Appeals approve and grant a 15' variance to allow a 10' side/rear yard setback for a new accessory building at 8910 Sheridan Drive.

Appeal No. 2 is in variance to Section 229-78 (B) Accessory Structures.

DISCUSSION:

Mr. Charnock explains that he would like to have his building hidden from view from Sheridan Drive. To do this, according to Erie County, he needs to put a fire hydrant in. With the fire hydrant in front of the property, and the building put at the proposed location, it would meet the criteria. The new building would be a storage facility for the work trucks. The depth of the building needs to reflect the use of trucks with trailers. Mr. Charnock would like to set the building back as far as possible to avoid building on a water or gas line that go to an existing structure.

Chairman Skaine reads a letter dated January 4, 2008: "Dear Members of the Zoning Board, I would like to have attended the upcoming meeting on January 8, but I will be out of town. I am one of the owners of the property at 8930 Sheridan Drive, and make reference to Appeal No.2 on the agenda. Please read my letter at the meeting. The property at 8910 Sheridan Drive had been zoned residential until it came up for a vote to rezone it commercial in 2002. At that time I attended the meeting along with my mother who was also an owner of the property next door. Mr. Charnock wanted to have a landscaping business there. There would not be much change to the property as his chemicals would be stored in a shed already on the property, and the hours of operation were during the day. About the only difference we would see would be some outside storage of vehicles. We were concerned about the drinking water on our property which is from a well, but Mr. Charnock explained how safeguards would be in place, and he also had no problems with his safety record. We have had no complaints since he has been there. A request for a 15' variance to allow a storage shed on the property has now been requested for the eastern side of his property. He has also placed stakes on his property to show where the shed would be placed. If you go from his lot line to our side, you will see a line of maple trees which were planted more than 40 years ago by us just inside of the lot line on our side. Next to the maple trees is the driveway to the house. Not only would I have a concern on our maple trees, but our property, being residential, would be detracted from having to look at the back side of a shed every time we entered or exited it. I am not in favor of this shed, or the appeal for the setback. I ask that you do not approve it. I would also invite the board members to the property so they could actually see where the driveway, the trees, and the lot line is, as well as where the building would be place din relationship to them. In actually seeing this, I think that you could more clearly see that this would not be fair to our residential country property, and would make it seem like we were being encroached upon. Thank you for your consideration, sincerely, Karen Kassab." The letter is on file.

Chairman Skaine reads another letter into the record, it is dated January 7, 2008: "To Jim Callahan and Members of the Zoning Board of Appeals. I am part owner of the residential property listed above on Sheridan Drive. It has come to my attention that a zoning variance is being requested by the property owner on the east side of me. I am in strong opposition to the variance being requested based on the following: 1.The character of my residential property will be adversely affected. A building of this size should be at the front of the property with sufficient green-space between our parcels to keep in character with the town's standards. My parcel, in particular, is relatively narrow, and such a large building in close proximity to my lot will cause my lot to appear "walled-in". 2. Potential future development on my parcel could be compromised by an overly dense, cluttered and imposing development to my east. 3. Other building-placement options exist that would not require a zoning variance nor would impose on my parcel. 4. This hardship is being created by the property owner, because he could place the building in a different location and comply with the law. Instead he is asking to place it in a different location which will violate present regulations and negatively impose on my property. 5. I already have a severe encroachment problem in the same area. The car shop placed its building on the lot line (zero setback), and the parking lot in front of the building apparently crosses the lot line (negative setback). Complaints were made by my father, James P. Misner, to Clarence Officials at the time of the building construction

with no satisfactory resolution. I am trying to assure that no further encroachments occur. I would appreciate knowing that your decision would be in both the best interests of the town and my residential parcel, and look forward to the ruling. Thank you for your time in this matter. Sincerely, James Misner.” The letter is on file.

Mr. Charnock said they tried to locate the building on a portion closer to Sheridan Drive, however they could not get through Architectural Approval at the Town Board.

Mr. Mills asked if the applicant explored the cost to build over the water and gas lines. Mr. Charnock said it is 65,000 to bring the fire hydrant in a couple hundred feet. Mr. Mills asked if a smaller structure would work. Mr. Charnock said he could get away with a smaller structure.

Mr. Charnock said the row of maples that is referenced in one of the letters is on the neighbor’s property and would not be touched.

Mr. Charnock said the house on the adjacent property was there before his business was. He does not believe anyone currently lives in the house. Mr. Charnock has been at this location for six years and indicates that most of the chemicals are stored in a concrete block building that is already on the property. His business handles agricultural chemicals so there may be some storage at some point in the proposed new building. The trucks and trailers are currently parked outside and he would like to be able to park them inside to save on the wear and tear of the vehicles. He goes on to explain that the fire hydrant would have to put in at the street and the back corner of the building needs to be within 400’ of the hydrant. The County puts the hydrant in at no charge but Mr. Charnock would pay a yearly fee.

Mr. Henning asked what the applicant would do if the Zoning Board of Appeals denied his request. Mr. Charnock does not have a back-up plan.

Town Attorney Steven Bengart asked if the applicant would be willing to agree to a condition set on the motion prohibiting any storage of chemicals in the proposed building. Mr. Charnock said he would agree.

Vice-Chairman Michnik asked if it would be acceptable to put the proposed building in the back of the property and have a sprinkler system installed. Jim Callahan explained this would not be acceptable per State Code.

Vice-Chairman Michnik asked if most of the chemicals were stored in tubs. Mr. Charnock said yes. The chemical comes in concentrated form and then is watered down and is not flammable. The chemicals are not stored for a long time; they are used within a week or two. The chemicals are expensive; there is no waste and no dumping.

Councilman Bernard Kolber suggests moving the building closer to the driveway; this would be over the water and gas lines. Mr. Charnock is concerned with the thought of any problems in the future where those lines would need to be accessed; part of his building would have to be torn up.

Mr. Mobius asked if a concrete pad is necessary. He suggests the applicant move the building over the water and gas lines and use asphalt; if there is ever a problem with the water or gas lines it is easier to work with asphalt. If the building is moved over the applicant would not need a variance.

ACTION:

Motion by Raymond Skaine, seconded by Hans Mobius, to **table** Appeal No. 2 to allow the applicant the opportunity discuss the issues with his father and to decide if the request is necessary. The applicant is asked to consider Mr. Mobius' and Councilman Kolber's suggestion of moving the building over the water and gas lines.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 3

Pegasus Property Management
Commercial

Requests the Board of Appeals approve and grant a variance to allow front yard parking at 9545 Main Street.

Appeal No. 3 is in variance to Section 229-87, Additional Parking Requirements.

DISCUSSION:

David Saleh is representing Pegasus Property Management. Daniel Snyder is the owner of the company and is present as well. Mr. Saleh explains that the property is at the corner of Main Street and Gunnville Road. They have done a lot of work on the building. There are five (5) existing parking spaces in the front of the property, these spaces will be reconfigured. Mr. Skaine asked if the request belongs at the Zoning Board of Appeals since there are no parking spaces being added. Jim Callahan said the existing parking is considered pre-existing non-conformance; any change to the parking in the front needs to be addressed. Mr. Saleh provides an explanation on the history of the business and how it has grown; he said he wants to make the parking area safer and provide handicap accessibility as well. It is clarified that the parking will be changed from five (5) spaces to four (4), which will consist of two (2) regular spaces and two (2) handicap spaces. The nature of the business is the representation of financial institutions and colleges and universities through software marketing. Mr. Saleh said the employees will always park in the back.

Mr. Snyder said there will be 2 visits per month from a group which would consist of 6-12 individuals. Many of these individuals will be dropped off at the facility; most commonly via shuttle bus.

Vice-Chairman Michnik asked if the applicant could have handicap parking only in the front of the property and post it as such on Main Street; then suggests three handicap parking spaces in the front and a few in the back. Mr. Snyder said the building is not handicap accessible from the back, and goes on to say it might be difficult to read the posted sign as this can be a congested intersection.

In response to Mr. Henning's question regarding the number of employees, Mr. Snyder said there is a total of 70 employees, the building would be occupied by 20-30 employees at a time.

Town Attorney Steven Bengart asked if the applicant would be willing to put up a parking sign, saying something similar to "15 minute parking only" and "no parking" signs in the perimeter of the circle. This does not mean the Board is in favor of the variance, this is just a suggestion.

If someone from the office was to park the visitors vehicles in the back it becomes a liability issue.

Vice-Chairman Michnik voices his concern with vehicles being parked in the circle.

Richard Bigler said it seems the issue is not so much a parking issue but a safety issue, he said it would be safer if the shuttle buses could drop of the groups of people at the Gunnville Road entrance.

Vice-Chairman Michnik asked if there is a way to enforce a “right-turn only” when exiting the Main Street parking lot. Chairman Skaine said the Department of Transportation (DOT) would enforce this issue.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 3 with the following conditions:

- no parking in the circle, signs are to be erected advising this and the applicant is to enforce this restriction.
- limited to four (4) visitor parking spaces which includes two (2) handicap parking spaces.

Raymond Skaine Aye
Arthur Henning Aye
Ryan Mills Aye

Daniel Michnik Aye
Hans Mobius Aye

MOTION CARRIED.

Meeting adjourned at 8:12 p.m.

Carolyn Delgato
Senior Clerk Typist