

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday January 12, 2010
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
Planner Brad Packard
Town Attorney Steven Bengart
Councilman Bernard Kolber (arrived late)
Planning Board Liaison Richard Bigler

Other interested parties present:

Joseph Kwiatkowski	Annette Kwiatkowski
Jeff Palumbo	C. Kelkenberg
Ryan Jensen	Don Kleinschmidt
Eric Redmill	

Chairman Henning notes that a letter has been received from All Seasons Rental with regards to the appeal that was approved on December 8, 2009. The letter is complimentary to the work the Zoning Board of Appeals members performed on the request. The letter is on file.

Old Business

Appeal No. 2

Joseph J. Kwiatkowski
Residential Single-Family

Requests the Board of Appeals approve and grant a 612 square foot variance to allow for the construction of a 1,140 square foot accessory structure at 5205 Bank Street.

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

DISCUSSION:

Joseph and Annette Kwiatkowski are present. Chairman Henning reads from the December 8, 2009 Zoning Board of Appeals minutes: "If the 10' x 30' extended area of the structure is removed the applicant would then be asking for a 372 square foot variance....Mr. Kwiatkowski thinks the building will remain structurally sound if he takes down the 10' x 30' section. Mr. Mills suggests Mr. Kwiatkowski measure the building to see if a 372 square foot variance is what he wants, then come back to the Zoning

Board of Appeals in January 2010. Mr. Kwiatkowski agreed to do this.” Mr. Kwiatkowski explained there is a beam running through an internal wall, so if he removed the three sheeting sides on the extra part that goes into the back of his yard the integrity of the building would still be strong. The overhang would remain. Mr. Michnik said the overhang is considered square footage. It was mentioned in the previous meeting that the roof structure would remain as is. Mr. Michnik thinks the problem started because the front overhang is considered part of the square footage; if the front part is considered, then the back part should be considered as well. Mr. Kwiatkowski thought the discussion at the previous meeting was to leave the roof line but remove some walls. Mr. Michnik refers to the Zoning Board of Appeals December 8, 2009 minutes in which Mrs. Burkard suggested the rear of the building be taken down to decrease its size, that portion of the building is approximately 300 square feet. Mr. Michnik was under the impression the whole back part of the structure would be taken off, including the roof.

Mr. Geiger asked what the applicant will use for support since the outside bearing wall is being moved. Mr. Kwiatkowski said there is an inner beam with four (4) 6” x 6” posts that would support the roof line in that area. The overhang has double supports. There is no cement under the overhang.

Mr. D’Amato asked how much of a hardship it would be for the applicant to remove the back portion of the structure. Mr. Kwiatkowski said there will be some structural work; the roof line would have to be cut off and torn down. He would lose about \$1200 in materials. The roof is made of architectural shingles that match the house.

There are five (5) neighbor notification forms from surrounding neighbors in the file. Mr. Kwiatkowski spoke with all the neighbors and no one is opposed to the project.

Mr. Mills asked what the purpose is for the open part of the structure being covered. Mr. Kwiatkowski said it will help keep the rain and snow off what is stored there. The entire structure is intended for storage only.

Mr. Michnik does not understand what the difference is between having that portion of the structure open or closed, either way it will still be used for storage. This is a mute point. Mr. Michnik thinks the size of the structure needs to be reduced.

Mrs. Kwiatkowski asked if there are different sized buildings allowed for different sized lots in Clarence. It is explained that the size of the building depends on the zoning classification of the lot.

Mr. Michnik suggests the applicant remove the extended roof and end the building at the straight wall but allow the roof overhang to stay. He suggests the overhang be about a foot to allow the water to drain off the roof. He suggests the request be changed from 672’ to 372’.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 2 under Old Business amending the request from 672’ to 372’, leaving the front porch and the interior of the building as is. The back overhang is to be removed.

ON THE QUESTION:

Mr. Geiger is not convinced that this is the answer. If the bearing wall is moved back doesn't it change the whole concept?

Chairman Henning said it is a nice structure, it is out of the way and can't be seen from the road, and the neighbors like it. He thinks the Board is being self-centered by asking the applicant to remove part of the structure. If the structure was not as nice as it is he would suggest taking it down. Under the circumstances he thinks the structure should either be left as is or entirely taken down.

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

MOTION CARRIED.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **amend** the above motion to include a deadline. The exterior roof to the rear of the structure at 5205 Bank Street must be removed by June 1, 2010, weather permitting. All other terms as discussed and motioned apply.

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

MOTION CARRIED.

Appeal No. 6

Charles Kelkenberg
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 50' variance to allow a single-family home on a 100' wide lot at 7060 Salt Road.

Appeal No. 6 is in variance of § 229-50.

DISCUSSION:

Jeff Palumbo of Damon Morey LLP is present along with the applicant Charles Kelkenberg. Mr. Palumbo explained that the 100' lot in question was, at one time, in compliance with the ordinance. It is no longer in compliance because the requirement is now 150'. Copies of the plan for what type of house Mr. Kelkenberg wants to build on the property have been distributed to all Zoning Board of Appeals members. The proposed home will fit on the lot with no need for further variances. It will be a 50' wide structure and will have 25' in setbacks on each side, meeting the setback requirements. Mr. Palumbo said if the request is denied the lot will remain vacant and the Town will not realize any increase in taxes. If granting this request will negatively impact the neighborhood then it should be denied; however this is not the case. The proposed house fits on the lot and will be in line with the surrounding houses. The applicant has attempted to purchase property on either side of this lot but to no avail.

Mr. Mills asked the applicant if he would agree to condition in the motion that states the structure can be no larger than 50' x 34'. Mr. Palumbo said that would be acceptable.

Mr. D'Amato asked if the applicant would live there or if it would be a spec home. Mr. Kelkenberg said it would be a spec home. There is no potential buyer. Construction would start early spring.

Ryan Jensen, of 7068 Salt Road, said he was concerned with the location of the home. He wants to make sure the orientation of the home is similar to the others in the area.

ACTION:

Motion by Ryan Mills, seconded by Robert Geiger, to **approve** Appeal No. 6 under Old Business, as written with the following condition:

- The foundation of the house is to be no larger than 50' x 34'.
- The house is to be in the same alignment as the house positioned to the northwest.

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

MOTION CARRIED.

New Business

Appeal No. 1

Eric Redmill
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 15' variance to allow a 135' front yard setback for the construction of a new home at 5706 Salt Road.

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

DISCUSSION:

Eric Redmill is present along with the builder, Don Kleinschmidt. Mr. Redmill explained that he and his wife have been looking for a wooded lot without a lot of neighbors for two years and would like to build a home there. He would like to put 20' of lawn around the house; the rest of the lot will remain as is. This is his and his wife's retirement home, they want their privacy. He does not want a long driveway to plow in the winter.

Mr. Kleinschmidt said another problem is that the houses on either side of the lot have two (2) different setbacks.

Mr. Geiger asked the applicant if there is any reason he couldn't go back 150'. It is clarified that the measurement is taken from the property line, not the center line of the road.

Mr. Redmill has two German Shepards and if the backyards are lined up and he puts a run in for his dogs, the first thing the dogs will see are people on either side and he doesn't want barking or problems. If the house is up 135' and he lets the dogs out, they're still even with the sides of the adjacent houses or further forward.

Mr. Mills is concerned about the neighbor to the north. It was a spec house and has since been purchased. There is not a neighbor notification form in the file for this house. There is a neighbor notification form in the file for the house to the south; however they have since moved. Mr. Mills would feel more comfortable if more of the surrounding neighbors knew about the request.

The proposed house goes back 48' and is 1800 square feet in size.

Mr. Michnik is also concerned with the neighbors in that they are unaware of what the applicant is requesting. Mr. Redmill was unable to find out who is moving in to the house to the north and the new neighbors to the south are unaware of what Mr. Redmill is requesting. Mr. Michnik thinks the applicant needs to go to the 150' setback to make it work for the neighborhood. All the homes are located in the 150'-190' setback area. The request is substantial as it changes the whole outlook of the neighborhood. Mr. Michnik thinks a lot of the issues here are self-created. He also thinks this request should be tabled to provide the Zoning Board of Appeals the opportunity to look at the surrounding houses to see if they had variances granted for their setbacks.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **table** Appeal No. 1 to provide the applicant time to contact the neighbors to the north and south of his lot and notify them of his variance request. A neighbor notification form is required from each neighbor.

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

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on December 8, 2009, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:05 p.m.

Senior Clerk Typist
Carolyn Delgado