

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday January 13, 2009
7:00 p.m.

Chairman Arthur Henning called the meeting to order at 7:00 p.m.

Board of Appeals members present:

Chairman Arthur Henning	Vice-Chairman Daniel Michnik
Hans Mobius	Ryan Mills
David D'Amato	Robert Geiger

Other Town officials present:

Director of Community Development James Callahan
Planner Brad Packard
Town Attorney Steven Bengart
Planning Board Liaison Richard Bigler

Other interested parties present:

Jay Capozzi	Bill Lunney
Stephanie Lunney	Thomas Dougherty
John Garas	Rev. George Cushing
David G. Hess	Alan E. Herrscher II
James Radwan	Jessica Altman
Mark Hans	

Chairman Henning welcomes Robert Geiger as the newest alternate Zoning Board Member.

Old Business

Appeal No. 3

The Capozzi Corp
PURD

Requests the Board of Appeals approve and grant:

- 1.) a 24" variance to allow the grade of a new single-family home to be built 72" over road grade.
- 2.) a 5' variance to allow a 40' front yard setback for the construction of a new home.

Both requests apply to 5057 Shale Bluff Drive.

Appeal No. 3 is in variance to Section 229-23 Grade and Section 229-52 (4) (a) Setbacks.

DISCUSSION:

Appeal No. 3 has been withdrawn per the applicant's request. Jay Capozzi is present and advises this is correct.

Appeal No. 4

The Capozzi Corp
PURD

Requests the Board of Appeals approve and grant a 24” variance to allow the grade of a new single-family home at be built 72” over road grade at 9743 Cobblestone.

Appeal No. 4 is in variance to Section 229-23 Grade.

DISCUSSION:

Appeal No. 4 has been withdrawn per the applicant’s request. Jay Capozzi is present and advises this is correct.

Chairman Henning reads a memo dated January 13, 2009 from Assistant Town Engineer Timothy Lavocat. The letter refers to Appeal No. 3 and Appeal No. 4 under Old Business and states that it is the opinion of the Town Engineer to deny the request for the top of the wall 72 inches over the road for both Appeal No. 3 and Appeal No. 4.

New Business**Appeal No. 5**

The Capozzi Corp
PURD

Requests the Board of Appeals approve and grant a 24” variance to allow the grade of a new single-family home at be built 72” over road grade at 9756 Cobblestone.

Appeal No. 5 is in variance to Section 229-23 Grade.

DISCUSSION:

Mr. Capozzi had a meeting with the Town’s Engineering Department this morning; an agreement was made to request a variance for 60” over the road in lieu of 72” over the road.

Chairman Henning reads a memo dated January 13, 2009 from Assistant Town Engineer Timothy Lavocat with regards to Appeal No. 5 which states the Engineering Department respectfully recommends approving an amended request for the top of wall to be a maximum of 60” over the road centerline elevation.

Mr. Capozzi explains the plan for the house is 5,000 square feet in size; this is the first and second floor without the lower level.

Mr. Mills asked if there will be any exposed concrete. Mr. Capozzi said no it will all be covered.

ACTION:

Motion by Daniel Michnik, seconded by Hans Mobius, to **approve** Appeal No. 5, as written with the recommendation that it be 60” above road grade center line elevation.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 1

Stephanie and Bill Lunney
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 680' variance to allow a 730' front yard setback for the construction of a new home at 9840 Keller Road.

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

DISCUSSION:

Stephanie and Bill Lunney are present. Mr. Lunney explains that this variance would reflect the best use of the land.

Neighbor notification forms are on file.

Chairman Henning did not see stakes at the property, Mr. Lunney said he put stakes up the day he submitted the application to the Planning and Zoning Office, which was December 17, 2008. Other members of the Board said they did not see the stakes either. Mr. Lunney said he put ribbons on the stakes.

Mr. Mobius asked if the reason for the setback is because of the Iroquois gas line. Mr. Lunney said the gas line is much further back, beyond the woods. 27 of the 37 acres are State and Federal Wetlands.

Mr. Lunney said he would like to build a ranch style home about 3500 square feet in size. He will develop an acre or two to develop a lawn. He would also like to maintain the pond that is on the property.

Mr. Mills asked if the applicant would be amenable to a lesser variance request. Mr. Lunney said anything is negotiable but he does not want to be next to the building on the adjoining property. He is under contract to buy the property once the variance is approved; he has not closed on the property.

Mr. Michnik asked the applicant what he plans on doing with the rest of the property once the house is built. Mr. Lunney plans on landscaping the area. He would like to clean up the woods as well. He has no intention for developing the property into more building lots. He will never sell any lots off this land. Mr. Michnik asked if Mr. Lunney would consider a setback at 600' or 630' as opposed to 730'; he thinks the 600' or 630' setback fits in better with the surrounding properties. Mr. Lunney wondered how the 100' would make a difference. Mr. Michnik voices his concern with setting a precedent if this variance is granted.

If the variance is denied Mr. Lunney said he would not buy the property; he would abandon proposal. It is confirmed that there is no access of County Road.

Chairman Henning asked if the applicant would have a problem with a motion that restricted the future splitting and selling of any piece of this parcel. Mr. Lunney does not have a problem with this condition.

ACTION:

Motion by Hans Mobius, seconded by David D'Amato, to **approve** Appeal No. 1, as written with the condition that no portion of the land will be spilt off and sold to anyone other than the Town of Clarence.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 2

Thomas Dougherty
Commercial

Requests the Board of Appeals approve and grant a 20' variance to allow a 54' front yard setback for the construction of an addition to an existing office located at 9900 Main Street.

Appeal No. 2 is in variance to Section 229-87 (C) (1) Development and Design Provisions.

DISCUSSION:

One neighbor notification form showing both neighbors' signatures is in the file.

John Garas is the attorney for the applicant and will be representing him this evening. Thomas and Marie Dougherty are present. Mr. Garas explains that Dr. Dougherty would like to move his practice to the building. Dr. Dougherty is a physician and has been practicing in Clarence for 25 years; he is also a resident of Clarence. Currently there is a 1600 +/- square foot building on the parcel which has been vacant for a number of years. As the building is, it is not suitable for Dr. Dougherty's practice because there are not enough examining rooms. He would like to build a few exam rooms on the front of the building; this will permit some aesthetic improvements to as well. The addition will not be any closer to the street than the existing buildings that lie on either side of the proposal. Mr. Garas refers to the Town Law 267-b(3)(b) and states that the proposal will clearly result in benefits to the applicant. He does not see a negative from the community point of view. An addition could not be put on the back of the building because the septic system is there. An addition could be put on either side of the building because it would be too close to the side lot line. There would be detriments to the health, safety and welfare of the community if this variance was granted. Mr. Garas said the applicant is requesting between a 54' variance and a 58' variance; a compromise of 56' may be feasible. He does not feel this is a substantial variance. The variance will not have an adverse impact on the physical or environmental conditions in the neighborhood. Mr. Garas said it is not a self created hardship as the building already violates the setback.

A letter from The Garas Law Firm is on file. The letter references Town Code 267(b)(3)(b).

Mr. Mills points out that the applicant is under a contract to purchase, he does not own the property yet. He asked if there were other locations the applicant looked at. Mrs. Dougherty said the

current patients do not want to drive miles out of their way; the proposed would be a good location. Mr. Mills asked what type of construction materials will be used on the addition. Mrs. Dougherty said stone or brick half way up the façade. Mr. Mills asked if the applicant would accept the condition of no vinyl siding on the façade if the request was granted. Mrs. Dougherty said yes.

Mr. Michnik asked if the brick ledge will continue on the addition. Mrs. Dougherty said yes. There will be no parking in the front. The entrance to the building will be in the back. There will be a single entrance on Main Street to the parking lot.

It is clarified that the 20' variance request is the maximum request sought.

Mr. Michnik voices his concern regarding lighting and signage on the building with respect to the neighbors. Jim Callahan explains that the Zoning Law limits the light spillage onto adjacent properties. The Building Inspector will verify that the light meets the code. The signage will be reviewed by the Planning Board.

ACTION:

Motion by Daniel Michnik, seconded by Hans Mobius, to **approve** Appeal No. 2, as written with the condition that lighting and signage be addressed through the Planning Department. The variance will not exceed 22'; the building will be no closer than 58' to the street.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 3

James Radwan/Trautman Associates
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 232' variance to allow a 322' front yard setback for the construction of a new multi-purpose building and sanctuary at 9520 Wehrle Drive.

Appeal No. 3 is in variance to Section 229-41 (A) Setbacks.

DISCUSSION:

James Radwan, architect from Trautman Associates is present along with Reverend George Cushing who is pastor of the church. David Hess, president of the Epiphany United Church of Christ, is present as well. Clarence resident Alan Herrscher is also in attendance.

Mr. Radwan explains that the front portion of the property is zoned Agricultural Rural Residential and the back part is zoned Industrial Business Park. The proposal sets the building back in order to maintain as much green space in front of the building as possible. A septic system and a retention pond will need to be installed in the front of the building. There are 76 parking spaces proposed for the front of the building. In the future the majority of the parking would be located to the back of the building. Due to the configuration of the building it needed to be located on the wider part of the property. The church currently owns the land. The first structure is approximately 94' x 125'. There are approximately 180-200 parishioners. The Phase II structure will be connected to the first structure via a common hallway.

Two neighbor notification forms are on file.

Al Herrscher is representing his neighbor who had another commitment this evening. The neighbor's backyard abuts the property and the neighbor would like to keep the buildings in line. Mr. Herrscher voices his concern with water problems on his property, which is further south on Gunnville Road. Neither he nor the neighbor he is representing want to deal with more water issues.

Mr. Mobius asked how much of the building will be encroaching on the agricultural rural district. Mr. Radwan estimates about 75' of the building will be in the agricultural rural zone. The building could go back further depending on the septic field and the retention pond. Testing will be done with regards to water issues and drainage.

Jim Callahan explains that this project has been to the Planning Board for preliminary review and is now at the TEQR Committee for environmental review. The water issue was one of the issues the Planning Board asked the TEQR Committee to address in their process.

Mr. Mills asked Mr. Radwan to provide more details on the construction of the building. Mr. Radwan said there is a possibility of a pitched roof; the sanctuary would peak at 32' in height. Around the perimeter a flat roof of 12' to 14' in height is proposed. The materials would be a combination of masonry and cedar siding. There is no landscape plan at this point. Mr. Mills asked the applicant if it would be acceptable in the case the variance was granted to have it contingent upon a barrier of adequate foliage for the property lines that abut a residential use. Mr. Radwan said yes, and indicated there is some existing foliage that he would like to maintain. The applicant would agree to add foliage to what is currently on site.

Mr. Herrscher does not want the patio area near the neighboring houses. Mr. Radwan explains there is a 100' setback between the rear property line for the residents on Gunnville Road and the proposed building. This project will be subject to Landscape approval.

Mr. Radwan said there is not another location or configuration that would work because, with the parcel abutting numerous properties, there will always be a neighbor that is not satisfied with the proposal.

Mr. Michnik voices his concern regarding traffic. He asked if the driveway to the east is next to the proposed driveway. Jim Callahan said that issue will be addressed at Planning and TEQR levels; the project will go through a full environmental review. The only item this Board should address is the setback request. Mr. Michnik also voices his concern with the location of the proposed picnic area.

Chairman Henning asked if there will be meetings every night at the church. Mr. Hess said it is unknown at this point because they do not have organizations in place yet.

Mr. Herrscher voices his concern with future meetings held at the church, saying it sounds like there will be meetings and traffic all day and into the evening for the neighbors to deal with.

ACTION:

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** Appeal No. 3, as presented.

ON THE QUESTION:

Mr. Mills notes that the project will need approval from the Landscape Committee and he requests a barrier and additional foliage for the surrounding residents view shed.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 4

Jessica Altman
Residential Single Family

Requests the Board of Appeals approve and grant a 1' 6" variance to allow an 8' 6" side yard setback for the installation of a new generator at 8889 Lake Glen Court.

Appeal No. 4 is in variance to Section 229-55 (E) (1) Accessory Structures

DISCUSSION:

Ms. Altman is present and explains the only location for the generator is that which is proposed. The land sharply slopes in the back yard and the opposite side of the proposed location is the driveway.

Mr. Mills asked if the applicant could bring in fill in order to place the generator in the back yard. Ms. Altman said there is a steep slope to the pond, it would not be feasible to bring fill in.

There is an empty lot to the west of the property. Ms. Altman said the owner of that lot lives on the opposite side of that lot and there has been no information on whether the lot will be sold.

One neighbor notification form is on file.

A pad was poured, but Ms. Altman would not allow the completion of the installation of the generator until the setback issue was resolved.

Ms. Altman will landscape the generator area.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato, to **approve** Appeal No. 4, as written with the condition that landscaping be completed by June 2009.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D'Amato	Aye		

MOTION CARRIED.

Appeal No. 6

Mark J. Hans
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow the placement of a generator within the front yard space of a corner lot at 4595 Sawmill Road.

Appeal No. 6 is in variance to Section 229-55 (D) Accessory Structures.

DISCUSSION:

Mark Hans is present. He explains that the proposed placement of the generator is where the gas and electric lines are and since this is a corner lot the locations is considered the front of the house, thus the request for a variance.

The generator is already installed. Mr. Michnik asked if any landscaping was planned in the area. Mr. Hans has discussed landscaping with his wife. If the request was denied, Mr. Hans said he would have to move the generator. He did not investigate other locations for the generator because the logical choice was to put it where the utility lines are. The current location is the easiest and most cost effective location. There was some confusion as to who was to obtain the permit from the Town, the home owner or the installer. When Mr. Hans applied for the permit he found he would need a variance. If the request was denied and the generator had to be moved it would be a hardship.

ACTION:

Motion by Ryan Mills, seconded by David D’Amato, to **approve** Appeal No. 6, as written.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D’Amato	Aye		

MOTION CARRIED.

Motion by Daniel Michnik, seconded by Arthur Henning, to **approve** the minutes of the meeting held on December 9, 2008 as written.

Arthur Henning	Aye	Daniel Michnik	Aye
Hans Mobius	Aye	Ryan Mills	Aye
David D’Amato	Aye		

MOTION CARRIED.

Meeting adjourned at 8:58 p.m.

Carolyn Delgato
Senior Clerk Typist