

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday February 9, 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
Ryan Mills
Robert Geiger

Vice-Chairman Daniel Michnik
David D'Amato
Patricia Burkard

Town Officials present:

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

Other interested parties present:

Eric Redmill
Kathy DeRose
Jay Capozzi

Don Kleinschmidt
Larry Negron

Old Business

Appeal No. 1

Eric Redmill
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 65' 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. He has provided signed neighbor notification forms from the neighbors immediately north and south of the property in question. The forms are on file. Mr. Redmill said the setback is actually going to be 150' based on the average of the houses on either side of his property, so the variance request is 15' not 65'. Mr. Redmill said he would be "ok" with a 150' front yard setback, however, he prefers 135'. It is explained that the further back the home is built the larger the catch basin area will have to be. Mr. Redmill spoke with Mr. Morgante, a neighbor, who said he would prefer the proposed house be built closer to the road. The further the house is built back on the property the more difficult it will be to eliminate the water from the back yard. Mr. Redmill will probably start construction within a month or two (2).

ACTION:

Motion by Robert Geiger, seconded by David D'Amato, to **approve** Appeal No. 1, under Old Business as follows: a 50' variance is granted to allow a 150' front yard setback for the construction of a new home at 5706 Salt Road.

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

MOTION CARRIED.

New Business**Appeal No. 1**

Stoneledge Stables, Inc./Kathy DeRose
Residential Single-Family

Requests the Board of Appeals approve and grant a variance to allow for the construction of a 2,160 square foot accessory structure independent of a primary structure on a vacant lot accessed via Stoneledge Estates private drive. Stoneledge Estates private drive is located north of 5103 Kraus Road.

Appeal No. 1 is in variance to § 229-55(J).

DISCUSSION:

Kathy DeRose is present and explained there was a large building on the lot a few years ago but it was taken down with the understanding that if she wanted to put up a smaller structure it would be ok to do that. She no longer has animals, but has planted twenty-one (21) fruit trees. The equipment she had left from the barn is in a shed which she thought would protect the equipment from the weather, but it does not. She wants to obtain a few more pieces of equipment for the fruit trees and needs more storage room. The proposed barn is smaller than what was previously on the property.

There are four (4) neighbor notification forms on file.

Ms. DeRose said the proposed structure has a 12' side wall with a 12'/12' or a 10'/12' pitch. She is not sure if the materials for this structure will match her house or the other shed that is on the property.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 1, under New Business as written.

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

MOTION CARRIED.

Appeal No. 2

Larry Negron
Residential Single-Family

Requests the Board of Appeals approve and grant a 7' variance to allow a 3' side yard setback for the installation of a generator at 8974 Stonebriar Drive. The generator is currently installed.

Appeal No. 2 is in variance to § 229-55(E) (1).

DISCUSSION:

Larry Negron is present. He explained there is a pool in his backyard and the only other place to locate the generator was on the side of the house, which only has 10' between the house and the side lot line.

Chairman Henning asked why a request for a variance was not submitted prior to the installation of the generator. Mr. Negron said Frey Electric apologized to him because they were looking at the Town of Amherst's Code by mistake.

Mr. D'Amato said there is a spot near the garage that may be a better position for the generator. Mr. Negron said he was not involved in the decision for the location of the unit.

Mr. Michnik asked if Frey Electric has agreed to move the generator, at their cost, if the request is denied. Mr. Negron said yes, he would make them because it was their mistake. Mr. Michnik asked if Frey Electric would agree to install fencing and landscaping around the unit, if it was allowed to stay in its current location. Mr. Negron said he would install fencing and landscaping, this was his plan from the beginning.

Two (2) neighbor notification forms are on file.

Mr. Negron would not have a problem with an alternate location for the generator. Frey Electric installed the generator at its current location because it is near the gas line.

ACTION:

Motion by Robert Geiger, seconded by Arthur Henning, to **approve** Appeal No. 2, under New Business as written subject to landscaping to cover and protect the view of the generator from the neighbor to the west. It is the owner's decision on what type of landscaping to install.

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

MOTION FAILED.

The Zoning Board of Appeals members entered into an attorney/client privilege discussion.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 2, under New Business.

ON THE QUESTION:

Mr. Mills said it is strongly recommended the applicant have a representative from Frey Electric at the next meeting.

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

MOTION CARRIED.

The applicant will be placed on the March 2010 Zoning Board of Appeals agenda.

Appeal No. 3

The Capozzi Corporation
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a variance to allow for a top of foundation wall elevation greater than 48" from the mean elevation of the frontage street at 9731 Cobblestone Drive.

Appeal No. 3 is in variance to § 229-23.

DISCUSSION:

Jay Capozzi is present and explained that the houses on either side of the property in question have received variances to increase the height 5' and 6' over the road. Mr. Capozzi provides two (2) neighbor notification forms. The forms are on file. Mr. Capozzi does not own the property yet, the legal owner of the lot is Dominic Piestrak. He said 9725 Cobblestone Drive has a walk-out and the top of the wall is 6' over the road. The proposed house would be a spec home and have a daylight basement; it would not be a walk-out. Mr. Capozzi estimates that in the newer areas of the Spaulding subdivision about 65% of the homes have a daylight basement.

Mr. Michnik asked for clarification on the exact dimension in which Mr. Capozzi is actually asking for. Mr. Capozzi confirms that he is asking for 5' 6" because this figure is between the 5' and the 6' that was allowed on either side of the lot in question. He attempted to discuss the situation with the Building Department but all representatives were busy.

Jim Callahan said the Building Department was asked to provide a letter, but the Building Department said they did not have enough information in order to provide the letter. A neighbor of the lot in question called the Planning and Zoning Office asking for specifics but Mr. Callahan could not provide that information because he did not have it.

Brad Packard said if the variance is granted, it is still be subject to review and approval of the Building and Engineering Department. When this item was placed on the agenda it was with the understanding that the applicant would meet on site with a representative from the Building and Engineering Department and the specifics would be discussed prior to the Zoning Board of Appeals meeting.

Mr. Mills asked if the applicant would be comfortable with 66", this would be an 18" variance. Mr. Capozzi agreed that would be sufficient. Mr. Callahan said the neighbor who called was very hesitant because there were no specifics regarding the request.

ACTION:

Motion by David D'Amato, seconded by Ryan Mills, to **table** Appeal No. 3 to allow Mr. Capozzi to meet with the Building Department.

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 January 12, 2010, as written.

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

MOTION CARRIED.

Meeting adjourned at 7:50 p.m.

Carolyn Delgato
Senior Clerk Typist