

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday February 12, 2008
7:00 p.m.

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

Board of Appeals members present were:

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
Planner Brad Packard
Town Attorney Steven Bengart
Planning Board Member Richard Bigler

Other Interested Parties Present:

Thomas Charnock
Joseph D. Beaser
Wayne Griffiths
Scott Van DeGenache
Mary Beth Cucinotta
Lauren Streit
Lindsay Folger
Scott Vondazanet

Karen Kassab
Debbie Griffiths
Jerry Shaffer
Mindy Gross
Brad Davidzik
Dolores Folger
Gary Greco

Old Business

Appeal No. 2

Christian & Thomas 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 this variance request is for the rear only, not the side; it is behind the detail shop. The building size will be increased from when it was first proposed to the Zoning Board of

Appeals. Mr. Charnock said he would like to tear down the small building that is in front. He feels this will be an improvement to the Town.

An adjacent property owner asked for clarification on the proposed location of the garage. Mr. Charnock explains that it is the same location as previously proposed; it is 25' from the neighbor's lot line which meets the code requirement. It is clarified that there is no variance affecting this neighbor's property. The neighbor thinks that looking at the back of a large garage from her residential property will decrease the value of her property.

Mr. Charnock said the existing detail shop is currently 10' off the neighbor's property; they've been driving in next to this building for a long time. He is looking to put his equipment in a building instead of having it outside; this is a seasonal business. He also points out that the neighbor's house is 1200 feet from Sheridan Drive. The neighbor and Mr. Charnock have not had problems in the past. The neighbor confirms that no one currently lives in the house on the property she owns.

The applicant does snow plowing in the winter, so they are in and out of the site during the winter; however the traffic is reduced at this time.

There is no proposed fire hydrant.

Mr. Charnock said there will be pick-up trucks, landscape trailers and other equipment stored in the building. Mr. Henning asked if the applicant would agree to tear down the old building before moving into the new building. Mr. Charnock said it would be difficult because he would have no place to store the items that are in the building being demolished. Mr. Henning suggested implementing a time frame to have the existing building demolished within 30 days of completion of the new building; Mr. Charnock said that would not be a problem. The building to be demolished is less than 50 years old.

Jim Callahan clarifies that the site was previously zoned Commercial and in 2005 it was rezoned to Restricted Business.

Town Attorney Steve Bengart suggests obtaining a better explanation on what type of chemicals, if any, will be stored in the building. Mr. Charnock said fertilizer will be stored in the building. Mr. Skaine reads from the January 8, 2008 Zoning Board of Appeals minutes which indicate "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."

Mr. Charnock said there is no winter storage of liquid because there is no way to keep it thawed.

ACTION:

Motion by Vice-Chairman Daniel Michnik, seconded by Arthur Henning, to **approve** Appeal No. 2 under Old Business, as written with the 10' rear setback only. The other building in question is to be demolished within 60 days of issuance of the Certificate of Occupancy on the new building.

ON THE QUESTION:

The neighbor is not happy with the decision. Mr. Mobius suggests planting trees behind the garage. Mr. Charnock said the area behind the proposed garage is currently solid woods; nothing further can be planted.

Chairman Raymond Skaine	Aye	Vice-Chairman Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Chairman Raymond Skaine reads a letter from the law offices of Damon & Morey dated February 5, 2008 and received in the Planning and Zoning Office on February 6, 2008. The letter requests Appeal No. 7 of the February 12, 2008 agenda be adjourned until the March 2008 meeting due to an unforeseen septic sewage system issue. Appeal No. 7 is off the table.

New Business**Appeal No. 1**

Joseph D. Beaser
Agricultural Floodzone

Requests the Board of Appeals approve and grant a 2.1' variance of the Flood Damage Prevention Law to allow the construction of a new pole barn with a finished floor elevation of 590.2' at 9700 Brauer Road.

Appeal No. 1 is in Variance to Section 107-5(D)(1a) Nonresidential Structures.

DISCUSSION:

Mr. Beaser explained he is asking for the variance so he does not have to bring in a lot of fill; he is in the woods and would have to take down many trees and grade it off really wide. The pole barn would be used for cold storage.

Jim Callahan explained that the Town's Engineering department provided assistance in writing the request to identify the exact elevations. Assistant Town Engineer Timothy Lavocat identified that it will have to meet the Flood Damage Prevention Law that this is in variance to and requires a Zoning Board of Appeals action for varying from the code.

Mr. Beaser said he will move the existing sheds off to the back side of the property.

In response to Mr. Mills' question regarding flood insurance, Mr. Beaser said flood insurance is not required on the residence.

Mr. Beaser explains the materials of the proposed structure as 6" x 6" lumber and metal on the outside and roof of the pole barn; he will do the construction. The structure will measure 30' x 52". The finished floor will be stone.

Neighbors at 9650 Brauer Road and 9780 Brauer Road are not present but have been notified. The neighbor notifications are on file.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No 1, as written.

Chairman Raymond Skaine	Aye	Vice-Chairman Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED

Appeal No. 2

Deborah Griffiths
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) A 14.3' variance to allow a 30.7' rear yard setback for the construction of an addition to the existing attached garage.
- 2.) A 3% Lot Coverage variance to allow 21% Lot Coverage with the construction of an addition to the existing attached garage.

Both requests apply to 9590 Hartwig Drive.

Appeal No. 2 request No. 1 is in Variance to Section 229-52(A) (4) (c) Setbacks.
Appeal No. 2 request No. 2 is in Variance to Section 229-56 Lot Coverage.

DISCUSSION:

Neighbor notifications are on file.

Mr. and Mrs. Griffiths explain that they want to store their boat and vehicles in the garage. The extension will be at the rear of the existing structure. Jerry Shaffer is the architect for the project and explains that the entrance to the addition will be the existing front load entrance; the variance is for an extension out the rear of the garage. The proposed addition can hold four (4) vehicles but the applicant's plan is for two (2) vehicles and one (1) boat.

ACTION:

Motion by Vice-Chairman Daniel Michnik, seconded by Hans Mobius to **approve** Appeal No.2, as written.

ON THE QUESTION:

Mr. Shaffer said the architectural style will match the house.

Chairman Raymond Skaine Aye
Arthur Henning Aye
Ryan Mills Aye

Vice-Chairman Daniel Michnik Aye
Hans Mobius Aye

MOTION CARRIED

Appeal No. 3

Gary Greco
Residential Single-Family

Requests the Board of Appeals approve and grant a 5.5' variance to allow a 7' side yard setback for construction of an addition to existing garage at 9336 Hunting Valley.

Appeal No. 3 is in Variance to Section 229-52 (A) (4) (b) Setbacks.

DISCUSSION:

Scott Vondazanet is the project manager for the architect on the project and is representing Gary Greco, who is present as well. Mr. Vondazanet explains the driveway has a significant drop in grade; 12 feet from his finished floor of the garage to the road. He has elderly in-laws living with him and currently it is a hazard with the cars being queued in the driveway. The side yard setback is not for the entire length of the garage, it is just for the front corner of the garage. The applicant will re-grade the driveway to the best of his ability.

Neighbor notifications are on file.

Mr. Vondazanet explains that the plan is for a concrete retaining wall in the back finished with synthetic stone. Mr. Mills questioned total square footage. Mr. Shaffer did not know the total square footage but explained that the garage portion at the right hand side would be 15' x 23' and consist of board and batton wood construction with synthetic stone, this will match the addition. The existing plants will be relocated, creating new landscaping.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No.3, as written.

Chairman Raymond Skaine Aye
Arthur Henning Aye
Ryan Mills Aye

Vice-Chairman Daniel Michnik Aye
Hans Mobius Aye

MOTION CARRIED

Appeal No. 4

Mindy Gross
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 13' variance to allow a 96' front yard setback for the construction of an attached garage at 10665 Clarence Center Road.

Appeal No. 4 is in Variance to Section 229-31(A)(4) Setbacks.

Ryan Mills recuses himself from all discussion and voting on Appeal No. 4 for business reasons.

DISCUSSION:

Mindy Gross explained she would like to turn the existing 2 bedroom, 1 bath home into a 3 bedroom, 2 bath home. She goes on to say the easiest way to this is to take the existing garage and make it into a bedroom, bathroom and first floor laundry and add a garage in front of that. The property has been staked.

Jim Callahan explains that the adjoining house is setback at 109'; this establishes the setback line for the applicant. The request is for 13' forward of the 109'. Normally, if the 109' hadn't already been established, the setback line would be 100'.

Vice-Chairman Michnik asked if landscaping was planned. Mrs. Gross said they will redo the landscaping and agrees to plant whatever it takes to make it look nice. Vice-Chairman Michnik suggests continuing the landscaping along the east side of the property, Mrs. Gross agrees.

Mrs. Gross explains she will be buying the house for an investment. She and her family will not be living in this house. She will remodel the house and eventually sell it. There is a signed contract for the sale of the house contingent on the granting of this variance request; the seller is aware of this.

Neighbor notification forms are on file.

ACTION:

Motion by Hans Mobius, seconded by Vice-Chairman Daniel Michnik to **approve** Appeal No. 4, as written with the following condition:

-the landscaping/shrubbery is to be continued on east side of the addition to the end of the garage.

ON THE QUESTION:

It is clarified that 10665 Clarence Center Road is the correct address for the variance request.

Chairman Raymond Skaine	Aye	Vice-Chairman Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Recuse		

MOTION CARRIED.

Appeal No. 5

Mike and Mary Beth Cucinotta
Residential Single-Family

Requests the Board of Appeals approve and grant a 2.5' variance to allow a 10' side yard setback for the construction of an attached garage with an In-Law area on the second floor at 4077 Thornwood Lane.

Appeal No. 5 is in Variance to Section 229-52(A)(4)(b) Setbacks.

DISCUSSION:

Neighbor notifications are on file.

Chairman Skaine reminds the Zoning Board members that this hearing is only for the 2.5' variance, not the In-Law apartment. The applicant is required to go before the Town Board for any action on the In-Law apartment.

Mrs. Cucinotta explains that she wants to make the room above the garage addition a space for her or her husband's mother or for an in-law or her grandmother to live.

Vice-Chairman Michnik voices his concern with this three-car garage being built in a neighborhood that predominantly has homes with two-car garages; more neighbors may come in for a variance to build a three-car garage, and if granted, would change the character of the neighborhood. Mrs. Cucinotta said the addition will not go to the fence as there are utility units there such as the electric meter.

Vice-Chairman Michnik asked if the applicant is willing to put landscaping around the addition to buffer it from the neighbor. Mrs. Cucinotta said yes.

Mr. Mills voices his concern with regards to the front elevation. Mr. Cucinotta said the addition will be set back approximately two feet (2'), it will have the same arched garage door and the same stone on the front. Mrs. Cucinotta draws a picture to illustrate the elevation and materials. There will be an exterior entrance on the side of the proposed structure. The applicant does not plan on keeping a third vehicle in the garage on a regular basis. Mr. Mills asked if it is essential to have a garage door for the third vehicle area. Mr. Mobius suggests making the garage door look like a house instead of garage door. Mr. Mills' thought was to install a window instead of the garage door and use the area for additional storage space.

ACTION:

Motion by Hans Mobius, seconded by Vice-Chairman Daniel Michnik, to **approve** Appeal No. 5, as written with the condition that landscaping be incorporated into the project to benefit the neighbor.

Chairman Raymond Skaine	Aye	Vice-Chairman Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Nay		

MOTION CARRIED.

Appeal No. 6

Brad Davidzik
Residential Single-Family

Requests the Board of Appeals approve and grant:

- 1.) A 5.5' variance to allow a 7' side yard setback on the north side of property for the construction of a new home.
- 2.) A 5.5' variance to allow a 7' side yard setback on the south side of property for the construction of a new home.

Both requests apply to 4945 Meadowbrook Road.

Appeal No. 6 is in Variance to Section 229-52(A) (4)(b) Setbacks.

DISCUSSION:

Brad Davidzik with the law firm of Damon and Morey is representing Natale Building Corporation in connection with the interest to purchase this property; the Folger family currently owns the property and there are two (2) members of the family present. Mr. Davidzik said this is a 75' wide pre-existing legal non-conforming lot; it is a prior platted lot. He refers to the Town Law Section 267-b (3) which is the State mandated balancing test, which balances the benefit to the petitioner against any detriment to the health, safety and welfare of the residents of Clarence; there are five factors that the petitioner needs to prove. Mr. Davidzik said he reviewed the Tax Maps and there are 28 lots on Meadowbrook Road that are either 70' or 75' wide; as a result the homes in the neighborhood do not have the required setbacks, thus this variance would be in keeping with the character of the neighborhood. The proposed home is the smallest footprint the builder could come up with due to the size of the lot. Mr. Davidzik does not feel the variance is substantial as it is just over 9% of the total lot width. He explains that there are no environmental impacts; the Folger family worked with the Health Department to obtain a waiver for a septic system at the site. Mr. Davidzik does not think the hardship is self-created as he is working with a previously platted lot and an updated Zoning Law.

It is clarified that the property has been for sale for several years.

Mr. Davidzik does not know the square footage of the proposed house. He does know that it will be pursuant to code; there will be no more variances.

Mr. Mobius voices his concern stating it appears that the house on the adjacent property is encroaching on this property. Mr. Davidzik said he is not aware of any issue regarding this matter. Town Attorney Steven Bengart said this would be the purchaser's issue.

Vice-Chairman Michnik voices his concern with the type of house that will be built; he does not want to see a massive home on the lot that would change the character of the neighborhood.

Chairman Skaine agrees with the issues that Mr. Davidzik described previously.

ACTION:

Motion by Arthur Henning, seconded by Ryan Mills, to **approve** Appeal No. 6, as written.

Chairman Raymond Skaine	Aye	Vice-Chairman Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Appeal No. 7

Brad Davidzik
Agricultural Rural-Residential

Requests the Board of Appeals approve and grant:

- 1.) A 41.5' lot width variance to allow a 108.50' wide buildable lot.
- 2.) A 36,238 square foot variance to allow a 21,700 square foot buildable lot.
- 3.) A 27,938 square foot variance to allow a 30,000 square feet buildable lot.

All requests apply to 10435 Tillman Road.

Appeal No. 7 request No. 1 is in Variance to Section 229-30(B) Lot Width.

Appeal No. 7 requests No. 2 and 3 are in Variance to Section 229-29(B)(1) Lot Area Provisions.

DISCUSSION:

Brad Davidzik, with the law firm of Damon and Morey, is representing the petitioner Pat McHugh. Mr. Davidzik explains that on February 5, 2008 he submitted a letter requesting an adjournment of the hearing; circumstances have changed and he requests the application be withdrawn.

APPROVAL OF MINUTES:

Motion by Raymond Skaine, seconded by Arthur Henning, to **approve** the minutes of the meeting held on January 8, 2008, as written.

Chairman Raymond Skaine	Aye	Vice-Chairman Daniel Michnik	Aye
Arthur Henning	Aye	Hans Mobius	Aye
Ryan Mills	Aye		

MOTION CARRIED.

Meeting adjourned at 8:12 p.m.

Carolyn Delgato
Senior Clerk Typist