

Town of Clarence  
Zoning Board of Appeals Minutes  
Tuesday March 8, 2011  
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  
Town Attorney Steven Bengart  
Councilman Bernard Kolber

Other interested parties present:

Anthony Agostino	Jamie Allen
Harold Erbacher	Vincent Paulsen
Daryl Martin	Tony Pacenzia
Frank Giumpa	

**Old Business**

**Appeal No. 2**

Northtown Automotive Group  
Commercial

Requests the Board of Appeals approve and grant a 48 square foot variance to allow for a pylon sign 80 square feet in area at 8150 Main Street.

Appeal No. 2 is in variance to § 181-3 (B)(1).

**DISCUSSION:**

Harold Erbacher, Northtown Financial Manager, and Anthony Agostino from the Division of Finance are present along with Jamie Allen of Signs Unlimited. Mr. Erbacher explained that Culligan Auto Place has a 99 year lease on the property, Northtown subleases from Culligan, E-Z Auto is a division of the Northtown Automotive Group. They are experiencing success at this location and have invested quite a bit of money in current signage at the site.

Mr. Mills asked what the benefit is in having the larger sign. Mr. Erbacher said awareness and presence is key to this business and a larger sign helps with that. Mr. Mills asked if there are other ways to advertise the business, Mr. Erbacher said they have television commercials and a website. However, there is no other way to convey the message on the property without that sign and a significant investment.

The current business has been up and running for five (5) weeks. The current sign went up about two weeks ago and the business has increased since then. Mr. D'Amato asked if a smaller sign went up at the

site would it be the end of the business, Mr. Erbacher said it is hard to tell. Mr. D'Amato asked if the sign was "grandfathered in", Town Attorney Steven Bengart said not to his knowledge.

Jim Callahan explained that this issue is before the Zoning Board of Appeals to determine whether it should be "grandfathered in" based on its historical presence versus a denial by the Sign Review Board. The Sign Law has changed since this sign was originally installed.

It is clarified that the sign will read E-Z Loan. Mr. Geiger asked if it makes sense to approve the variance request for eight (8) months as that is what the lease is for on the property.

Town Attorney Steven Bengart clarified that there is no grandfathering in, under the new Sign Law, that sign is not allowed.

The entire sign would have to be moved to come into compliance with the law; it is quite a cost to incur for an eight (8) month lease, nor does the property owner want to incur this cost. It will cost approximately \$4,000 to make a new face for the sign as it is right now.

Mr. Michnik clarified that the request could be granted for eight (8) months, but after eight (8) months, if a new lease is signed, the sign would have to come down and the sign would have to come into compliance with the new law.

If Mr. Culligan was in attendance at a meeting, it would not change the outcome of the decision of the Board.

The replacement face of the sign is already made because the applicant thought they could just replace the sign using the same dimensions as the current sign.

The applicant would rather not table the request.

Mr. Geiger feels that the hardship is self-created by Northtown because everything was manufactured before it was established it could be done.

#### **ACTION:**

Motion by Robert Geiger, seconded by Ryan Mills, to **approve** Appeal No. 2 under Old Business for eight (8) months, at which time the applicant will explore their options. This will make use of the faces that are already made up. The eight (8) months begins on March, 8, 2011 and ends on November 8, 2011.

#### **ON THE QUESTION:**

Mr. Michnik said at the eight (8) month period the sign must come down no matter what happens; this is part of the motion. At this point the applicant would have to re-apply for another sign.

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

**MOTION CARRIED.**

## New Business

### Appeal No. 1

Vincent C. Paulsen  
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) a 28' variance to allow for a front yard setback to a principal structure of 18'.
- 2.) a 304 square foot variance to allow for a total attached garage space equaling 1,360 square feet (52% of the total building area).

Both requests are for the construction of an addition to an existing attached garage on a corner lot at 5645 Martha's Vineyard.

Appeal No. 1 is in variance to § 229-52 (A)(1) and § 229-55 (D).

### **DISCUSSION:**

Vincent Paulsen is present and explained that his 21 year old daughter is mentally retarded and will need supervision for the rest of her life. His wife would like their daughter to have a place of her own to give her a sense of independence, but because of her handicap she needs to be close to the family. She would reside on the second floor of the proposed garage and the first floor would be used for storage. Mr. Paulsen has two (2) vehicles he would like to put in the garage as well. There would be a bathroom in the structure so that when his children run from the pool to use the facilities they will no longer ruin the hardwood floor in his home.

Mr. Geiger drove through the neighborhood and did not see another structure as close to the road as the applicant is proposing his garage to be. Mr. Paulsen said the man door will be moved to the back yard, the existing man door will be closed off. Mr. Geiger asked if the addition could be moved south which would put it more behind the house. Mr. Paulsen said that would be a lot more work because he would have to change the actual structure due to the second floor living space; he would have to raise the whole back of the house.

The house is 2860 square feet with four (4) bedrooms, two (2) full baths, a half bath and a basement. Mr. D'Amato said what the applicant is requesting can be accomplished by using the basement. He said the proposed structure is enormous and stands out in the neighborhood. It changes the look of the neighborhood. Mr. D'Amato asked if the applicant had an architect come out to his house to look at the options. Mr. Paulsen had an architect visit his home, Mr. Paulsen told the architect what he wanted and the plan was drawn up. Mr. Paulsen has lived in the house for seven (7) years, there are five (5) people living in the house. Mr. D'Amato thinks this can be accomplished in another way.

Mr. Mills agreed with Mr. D'Amato's comments. He understands what the applicant is trying to accomplish but he is not sure this is the best way to do it. Mr. Mills would like to see more exploration, possibly on the southern end of the house. However, if an addition was put on the southern end, a driveway would have to be installed going around the house. There are no deed restrictions that anyone is aware of. Mr. Paulsen's wife is a mortgage broker and works from home. Mr. Paulsen does not have an office in the home for his work. He stores his handy-man equipment in the garage; any mail related to his business is sent to a PO Box. It is clarified that a standard home occupation is allowed. Mr. Paulsen will not have clients come to his house. Mrs. Paulsen will have clients come to the house to sign documents; she has been doing this for seven (7) years.

Mr. Michnik explained that the second floor living unit could never be used as rental income, even when the house is sold. Mr. Paulsen understands this. Mr. Michnik clarified that Mr. Mills suggested the addition be more even with the front of the house and bump out either on the west or east side of the house.

Mr. D'Amato suggested the applicant take these suggestions to an architect and have him draw up a plan, then bring that back to the Board so they have specifics to review.

Town Attorney Steven Bengart clarified that before the applicant spends the money on an architectural drawing the applicant's concern is to know that the Board would entertain a potential variance approval. Mr. Michnik said he will not commit to a decision until he sees drawings; there is always potential.

Neighbor notification forms are on file.

Mr. Paulsen is asking the Board to table the request to allow him the opportunity to obtain and provide more detailed information to the Board.

### **ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 1.

### **ON THE QUESTION:**

Mr. Mills said the Board does not need to see a stamped ready drawing, but additional sketches would be beneficial. Mr. Paulsen should look into all the suggestions discussed at this meeting.

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

MOTION CARRIED.

### **Appeal No. 2**

Frank Giumpa  
Commercial

Requests the Board of Appeals approve and grant:

- 1.) a 20' variance to allow for a 25' setback inclusive of accessory uses to an adjoining residential use.
- 2.) a 13' variance to allow for a 12' side yard setback to an adjoining commercial use.

Both requests are for the construction of a new office building at 10060 Main Street.

Appeal No. 2 is in variance to § 229-87 (C)(4) and § 229-87 (C) (2).

### **DISCUSSION:**

Frank Giumpa, applicant, and Daryl Martin, architect, are present. Tony Pacenzia, owner of the property at 10060 Main Street is also present.

Mr. Martin said Mr. Giumpa wants to build a building next to his current business on Main Street. Mr. Giumpa currently rents the office space he is at, he does not own it.

One (1) neighbor notification form is on file.

Jim Callahan said the Planning Board looked at this plan at their March 2, 2011 meeting and made a recommendation contingent upon a side yard setback. They were comfortable with the overall site plan.

Mr. Michnik said he is concerned with the dumpster. Mr. Giumpa confirmed that there will be no dumpster and the front row of parking is being removed. There will be six (6) parking spots. There may be two (2) parking spots on the side of the building for him and one (1) employee. The residential neighbor liked the idea of a fence being installed between the properties. Mr. Giumpa agreed and will discuss the type of fence with the neighbor. Mr. Giumpa could not reach his landlord to obtain a neighbor notification form but he spoke with him yesterday and there were not issues raised. Mr. Giumpa will pave up to his property line so that cross access is an option in the future. He currently has two (2) and a half employees, this will stay the same in the new building.

Mr. Mills said he would feel more comfortable if there was neighbor notification on file from Mr. Giumpa's current landlord. The landlord was notified via the Planning Board Agenda. Mr. Mills asked what the construction materials would be for the building. Mr. Martin said they would like to do an asphalt roof, the Dryvit may be a cedar shake impression. A purchase price for the property has been agreed upon, but there is no contract yet.

The hours of operation for the business would basically be 9am to 5pm during the week, Tuesday, Wednesday and Thursday would have extended hours until 7pm. The back part of the property will not be disturbed at all. Mr. Giumpa hopes to break ground in April 2011. His current contact with his landlord is up August 1, 2011.

A condition of the Planning Board recommendation is to have the Landscape Committee review and approve a landscape plan.

#### **ACTION:**

Motion by Daniel Michnik, seconded by Robert Geiger, to **approve** Appeal No. 2, as written subject to the conditions placed on the applicant by the Planning Board.

#### **ON THE QUESTION:**

The fence shall be a six foot (6') high privacy fence and extend from the front of the building to the back of the garage on the west side of the property.

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 February 11, 2011, as written.

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

MOTION CARRIED.

Meeting adjourned at 8:13 p.m.

Carolyn Delgato  
Senior Clerk Typist