

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday March 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

Town Official(s) present:

Director of Community Development James Callahan

Other interested parties present:

Larry Negron
Jay Capozzi

Bob Snyder
Charles Kelkenberg

Old Business

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 and explained that the current location of the generator is the only place it could be installed. Bob Snyder of Frey Electric does the accounts receivable and sales management. He looked at the survey of the customer's property to find the right placement for the generator. It could not be installed next to the pool and was installed where the gas and electric lines run. During the month of March they had a cancellation so they called Mr. Negron to ask if he wanted his generator installed at that point. Mr. Negron said yes. They put the paperwork in after the generator was installed, which is not their protocol. Mr. Negron spoke with the neighbor who did not have a problem with the placement of the generator. Mr. Negron agreed to put shrubs around the generator to hide it from the neighbor's view.

Mr. D'Amato clarifies that the work was done prior to the permit being obtained. Frey Electric does a lot of work in Clarence and they are aware of the procedure and yet they installed the generator without a permit. Mr. Mills said this is frustrating for the Zoning Board of Appeals. Mr. Snyder apologizes. Mr. Mills said this was not an accident; the scheduling convenience for the installation cannot take precedence over Town Code. Mr. Snyder said this will never happen again. Mr. Mills said the generator could have been placed at the back of the house. Mr. Snyder said that would have been too

close to the pool. Mr. D'Amato suggested locating the generator on the side of the house with the garage door. Mr. Snyder said that would be too close to the chimney, plus the psi for the gas to the generator would be depleted because it is so far away from the gas line. Mr. Mills understands the cost to run gas and electric lines to the other side of the house, but it has been done. He asked if there is a specific code for installing a generator near a pool. Mr. Snyder said he is not sure if there is a specific code but he is looking out for health hazards. The generator would run once a week for less than an hour. Mr. Mills said people would not be in the pool if the generator was running because the power was out; he is not buying into the back location of the generator. Mr. Snyder said the current location of the generator is the most efficient place.

Mr. Michnik agreed with Mr. Mills' statement regarding the location of the generator; it could be placed in the back yard at the northeastern side of the property. Mr. Michnik said he is aware of the added cost to run a gas and electric line if the generator were to be located at the northeastern side of the property. Mr. Snyder said there is a playset in that area of the backyard. Mr. Michnik voices his concern about the neighbor snowplowing and having chunks of ice damage the generator. Mr. Negron said he would build a brick wall to protect the generator. Mr. Michnik said if a car accidentally drives into the generator the brick wall will not protect it; there are a lot of other places to put the generator. Mr. Snyder said it is a low-profile generator, it cannot be seen over the fence and if Mr. Negron puts bushes around it the neighbors will not see it at all.

Mr. Mills asked Mr. Negron what he would do if this variance request was denied. Would he put it in a different location or not have a generator at all? Mr. Negron said that is undecided at this time.

Mr. Negron said he will put up a fence or shrubbery, whatever the Town wants him to do. His plan was to extend the stone that is in front around to the fence and plant some tall trees around the generator. He would make the fence whatever height the Town wanted.

ACTION:

Motion by Arthur Henning, seconded by Robert Geiger, to **approve** Appeal No. 2, under Old Business, as written, with the following conditions:

- a proper fence is installed, at least two feet (2') high.
- necessary shrubbery to be installed so the generator is completely hidden from the neighbor.

ON THE QUESTION:

It is clarified that the fence will be a brick/stone wall to match what is currently at the front of the property. The work is to be completed by June 1, 2010.

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

MOTION CARRIED.

Appeal No. 3

The Capozzi Corporation
Planned Unit Residential Development

Requests the Board of Appeals approve and grant an 18" variance to allow for a top of foundation wall elevation 66" above 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. Chairman Henning noted that there is a memo dated March 1, 2010 from the Town Engineering Department in the file. The memo indicates there are no objections to this request however the grading and drainage plan is subject to review and final approval by the Engineering Department. Mr. Capozzi is familiar with this memo.

Mr. Capozzi explained that the house to the north is at five feet (5') and the house to the south is at six feet (6'). He would like to build a daylight basement in the home. Mr. Capozzi has a contract on the lot.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **approve** Appeal No. 3, under Old Business, as written.

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

MOTION CARRIED.

New Business**Appeal No. 2**

The Capozzi Corporation
Planned Unit Residential Development

Requests the Board of Appeals approve and grant a 12' variance to allow for a top of foundation wall elevation 60" above the mean elevation of the frontage street at 9762 Cobblestone Drive.

Appeal No. 2 is in variance to § 229-23.

DISCUSSION:

Mr. Capozzi is present. He does not have a contract to buy this lot, yet. It appears that the individual who was interested in the lot may not get financing so the deal may fall through. When Mr. Capozzi was told this he said he would purchase the lot if he could get a variance on it. But he does not want to get a variance without owning the lot. He thought he would know if he was going to purchase the lot by now. He spoke with neighbors on both sides of the lot and they have no problems with his request. If he finds out that he gets the lot within the next couple weeks he will come back next month for the variance request. He is asking the Board to table this request. There is a possibility that he will not be the contractor on the property.

ACTION:

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

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

MOTION CARRIED.

Appeal No. 1

Charles R. Kelkenberg Jr.
Agricultural Rural Residential

Requests the Board of Appeals approve and grant:

- 1.) a .49 acre variance to allow a .84 acre lot.
- 2.) a 50' variance to allow a lot with 100' of road frontage onto a publicly dedicated right-of-way.

Both requests apply for the request to allow the creation of a new residential building lot at an existing vacant lot between 5720 and 5740 Davison Road.

Appeal No. 1 is in variance to § 229-39(B) and § 229-40 (A).

DISCUSSION:

Charles Kelkenberg is present and explained that he purchased the land years ago and has subsequently split it into building lots. The minimum frontage used to be 100' but is now 125'. He thought the 100' lot that remained was "grandfathered" in as a building lot. He was not actively trying to sell the 100' lot; someone approached him to see if he wanted to sell it. The lots south of the lot in question are 100' each with homes built on them that range from 1400 square feet to 2200 square feet. Directly across the street is a horse farm. Mr. Kelkenberg does not currently have a contract on the property; he probably would not sell the property without building on it. Mr. Kelkenberg has no plans for a spec home at this location.

Mr. Mills asked what the applicant would do if his request was denied. Mr. Kelkenberg is unsure what he would do. The market value of this parcel is \$45,000.

Mr. Michnik asked why the Meyers' was not built next to 5720 Davison. Mr. Kelkenberg said the owner did not want to look at the manure pile across the street if her house was to be built on said lot. Mr. Michnik asked if this lot could be used as an entrance to a minor subdivision that could be built behind the existing houses. Mr. Kelkenberg said that would be too cost prohibited; it costs a lot of money to put those type of roads in. He plans on building an 1800 square foot two-story home on the lot, if this was a condition set forth in an approval by the Zoning Board, Mr. Kelkenberg said he would not have a problem with it. Mr. Kelkenberg would be willing to extend the lot back to obtain the minimum acre requirement; however he said people don't want the extended depth because they don't want to take care of that much yard. Mr. Michnik said if the depth was added the lot would then be in line with 10970 Howe Road.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the second component of Appeal No. 1, under New Business, with the condition that the north and south dimensions of the home built on that lot does not exceed 50'. The first component of the applicant's request is withdrawn as Mr. Kelkenberg will utilize the property that he owns to the west of the lot, which is 5870 Davison, to satisfy the acreage requirement.

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

MOTION CARRIED.

Motion by Robert Geiger, seconded by Ryan Mills, to **approve** the minutes of the meeting held on February 9, 2010, as written.

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

MOTION CARRIED.

Meeting adjourned 7:57 p.m.

Carolyn Delgato
Senior Clerk Typist